

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

6:11-31782 Dina Guadalupe Garay

Chapter 13

#1.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 3966 Camellia Dr, San Bernardno, CA 92407

MOVANT: USA BANK NATIONAL ASSOCIATION

EH__

Docket 68

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dina Guadalupe Garay

Represented By
Aalok Sikand
Vito Torchia - DISBARRED -

Movant(s):

U.S. BANK NATIONAL

Represented By
Megan E Lees

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Hearing Room 303

10:00 AM

6:15-10977 Juan E Lopez and Maria L Lopez

Chapter 13

#2.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 13684 Tioga Ct., Fontana, CA 92336-3801

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 34

Tentative Ruling:

Tentative Ruling:

4/4/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to§ 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3, and 12. Alternative request for adequate protection is denied as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Juan E Lopez

Represented By
Anthony Wilaras

Joint Debtor(s):

Maria L Lopez

Represented By
Anthony Wilaras

Movant(s):

Wells Fargo Bank, N.A.

Represented By

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CONT... Juan E Lopez and Maria L Lopez

Chapter 13

Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

6:16-16179 Raul Navarrette and Leslie Navarrette

Chapter 13

#3.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3083 Avalon Parkway, Perris, CA 92571

MOVANT: CITIMORTGAGE INC

EH__

Docket 31

Tentative Ruling:

Tentative Ruling:

4/4/17

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3. DENY request under ¶ 14 for lack of cause shown.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Raul Navarrette

Represented By
Paul Y Lee

Joint Debtor(s):

Leslie Navarrette

Represented By
Paul Y Lee

Movant(s):

CitiMortgage, Inc.

Represented By

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10:00 AM

CONT... Raul Navarrette and Leslie Navarrette

Chapter 13

William F McDonald III
Cheryl A Knapmeyer
Carol M Turek

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

10:00 AM

6:16-17526 Emeterio Rodriguez and Leticia Rodriguez

Chapter 13

#4.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 TOYOTA PRIUS; VIN NO: JTDKN3DU3D1716867

MOVANT: TOYOTA MOTOR CREDIT CORPORATION

CASE DISMISSED 3/21/17

EH__

Docket 35

Tentative Ruling:

4/4/17

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT relief from § 1301(a) stay. GRANT waiver of 4001(a)(3) stay. GRANT request under ¶¶ 2 and 12. DENY alternative request for adequate protection as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Emeterio Rodriguez

Represented By
Anthony Obehi Egbase
Crystle J Lindsey

Joint Debtor(s):

Leticia Rodriguez

Represented By
Anthony Obehi Egbase

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Hearing Room 303

10:00 AM

CONT... Emeterio Rodriguez and Leticia Rodriguez

Chapter 13

Crystle J Lindsey

Movant(s):

Toyota Motor Credit Corporation as

Represented By

Tyneia Merritt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

10:00 AM

6:16-21112 Bingo Innovations of California, Inc.

Chapter 7

#5.00 CONT Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Civil Case CIVDS 1512462 Pending in San Bernardino Superior Court.

MOVANT: ED KALEFF, FATHER JOSEPH SHEA

From: 3/28/17

EH__

Docket 17

Tentative Ruling:

03/28/2017

The Movants seek relief to pursue a state court action against the Debtor and related parties. At minimum, the Movants must attach the complaint for the Court to examine any potential impacts the Complaint may have on the instant bankruptcy case.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Bingo Innovations of California, Inc.

Represented By
Stuart G Steingraber

Movant(s):

Ed Kalef, Father Joseph Shea

Pro Se

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:17-10052 Jerry A La Cues

Chapter 13

#6.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 1925 Scenic Ridge Dr. Chino Hills, CA 91709

MOVANT: WELLS FARGO BANK NA

CASE DISMISSED 2/9/17

From: 3/7/17

EH__

Docket 12

***** VACATED *** REASON: WITHDRAWAL OF MOTION FLD 3/9/17**

Tentative Ruling:

03/07/17

The Debtor's case was dismissed on February 9, 2017, therefore no stay is in place. However, the Movant has also requested relief under § 362(d)(4). As to this request, service is improper. The proof of service indicates that the Motion was served on the Debtor at "1925 Ridge Dr" instead of the correct mailing address "1925 Scenic Ridge Dr." On this basis, the Court is inclined to CONTINUE the hearing on the Motion to April 4, 2017, at 10:00 a.m. for Movant to re-serve the pleadings.

APPEARANCES WAIVED. Movant to file and serve the Notice of Continued Hearing and Motion on the Debtor.

Party Information

Debtor(s):

Jerry A La Cues

Pro Se

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Jason C Kolbe

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CONT... Jerry A La Cues

Christopher Darden

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:17-10492 Jacob Joseph Clausen

Chapter 7

#7.00 CONT Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Action in NonBankruptcy Forum / Spousal & Child Support, Distribution of Property, Dissolution of Marriage

MOVANT: TANYA C. CLAUSEN

From: 3/28/17

EH__

Docket 9

Tentative Ruling:

4/4/17

"It is appropriate for bankruptcy courts to avoid incursions into family law matters out of considerations of court economy, judicial restraint, and deference to our state court brethren and their established expertise in such matters." *In re Stanwyck*, 2008 WL 8448839 at *4 (B.A.P. 9th Cir. 2008) (quoting *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985)). Furthermore, 11 U.S.C. § 362(b)(2)(A)(ii)-(iv) provides exceptions to the automatic for certain matters that are within the scope of the motion.

There are, however, requests contained within the motion that extend beyond the scope of the exceptions and the *Stanwyck* decision, requests that involve "the division of property that is property of the estate." The appropriate balance is to allow the state court to conduct equitable distribution proceedings in state court, while this Court retains jurisdiction over distributions from, and claims against, the estate. *See, e.g., In re Robbins*, 964 F.2d 342, 345-46 (4th Cir. 1992) ("[T]he bankruptcy court correctly placed equitable distribution disputes in the category of cases in which state courts have a special expertise and for which federal courts owe significant deference Other courts that have considered the issue of lifting an automatic stay in order to let equitable distribution proceedings conclude in state court have sensibly done so while retaining jurisdiction to make the subsequent distributions from the estate."); *In re*

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CONT... Jacob Joseph Clausen Chapter 7

Roger, 539 B.R. 837, 845 (C.D. Cal. 2015) ("According to the court in *Curtis*, the most important factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate."). The factors the Court should consider on a motion for relief from stay to proceed in a non-bankruptcy forum are the *Curtis* factors. *See, e.g., In re Roger*, 539 B.R. 837, 844-45 (C.D. Cal. 2015). The application of these factors in a divorce dissolution proceeding, such as this, generally results in a finding that granting relief from stay is proper. *See, e.g., In re Taub*, 438 B.R. 39, 45-50 (Bankr. E.D.N.Y. 2010) (applying *Sonnax* factors, which are identical to the *Curtis* factors). Ultimately, Debtor provides no justification for why the divorce proceeding should be stayed, and, in accordance with *MacDonald* decision, the state court is the proper venue for the proceeding to occur. Furthermore, the evidence submitted by Movant indicates that staying the divorce proceedings may prejudice Movant, as there appears to be a possibility that Debtor is attempting to hide assets.

For the reasons described above, the Court is inclined to GRANT the alternative relief requested by Movant, listed in ¶ 5 of their attachment to the request for relief. Movant will be allowed to proceed in state court to a final judgment. The stay will remain in effect with respect to the enforcement of any judgment against Debtor or property of the bankruptcy estate, subject to the exceptions outlined in § 362(b)(2)(A)(ii)-(iv), and this Court retains jurisdiction over distributions from, and claims against property, property of the estate.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jacob Joseph Clausen

Represented By
Jenny L Doling

Movant(s):

Tanya Clausen

Represented By
Christopher Hewitt

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Central District of California
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10:00 AM

CONT... Jacob Joseph Clausen

Chapter 7

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

6:17-10614 Sandra Inez Guerra and Herman Pedro Enciso

Chapter 7

#8.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2015 CHEVROLET TRAVERSE, VIN
1GNKRFKD7FJ372768

MOVANT: AMERICREDIT FINANCIAL SERVICES INC dba GM FINANCIAL

EH__

Docket 16

Tentative Ruling:

4/4/17

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to §§ 362(d)(1) and (2).
GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶ 2 and 12. DENY
alternative request for adequate protection as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or
written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Sandra Inez Guerra

Represented By
Lara T Abuzeid

Joint Debtor(s):

Herman Pedro Enciso

Represented By
Lara T Abuzeid

Movant(s):

Americredit Financial Services, Inc.,

Represented By

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10:00 AM

**CONT... Sandra Inez Guerra and Herman Pedro Enciso
Sheryl K Ith**

Chapter 7

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

6:17-10688 John W Wells

Chapter 7

#9.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 39425 Calle De Suenos, Murrieta, California 92562

MOVANT: US BANK NATIONAL ASSOCIATION

EH__

Docket 13

Tentative Ruling:

4/4/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to §§ 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶ 2 and 3.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

John W Wells

Represented By
Daniel King

Movant(s):

U.S. Bank National Association, not

Represented By
Megan E Lees

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:17-11163 William Pete Murray, 3rd

Chapter 7

#10.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2004 Ford F150 Truck

MOVANT: KINECTA FEDERAL CREDIT UNION

EH__

Docket 9

Tentative Ruling:

4/4/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2).
GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative
request for adequate protection as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or
written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

William Pete Murray 3rd

Represented By
Shawn Anthony Doan

Movant(s):

Kinecta Federal Credit Union

Represented By
Mark S Blackman

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

10:00 AM

6:17-11335 Brian Scott Bunnell and Wendi Lynn Bunnell

Chapter 13

#11.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2007 Forest River Travel Trailer, V.I.N.
4X4FSYN297C030694

MOVANT: PARTNERS FEDERAL CREDIT UNION

EH__

Docket 14

Tentative Ruling:

4/4/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2).
GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative
request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or
written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Brian Scott Bunnell

Represented By
Todd L Turoci

Joint Debtor(s):

Wendi Lynn Bunnell

Represented By
Todd L Turoci

Movant(s):

Partners Federal Credit Union

Represented By

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10:00 AM

**CONT... Brian Scott Bunnell and Wendi Lynn Bunnell
Yuri Voronin**

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, April 04, 2017

Hearing Room 303

10:00 AM

6:17-11596 David Allen and Kathleen Allen

Chapter 7

#12.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1708 Forane Street, Barstow, CA 92311

MOVANT: PACIFIC MARINE CREDIT UNION

EH__

Docket 8

Tentative Ruling:

4/4/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶ 2 and 11.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

David Allen

Represented By
Todd L Turoci

Joint Debtor(s):

Kathleen Allen

Represented By
Todd L Turoci

Movant(s):

Pacific Marine Credit Union

Represented By
Timothy J Silverman

**United States Bankruptcy Court
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10:00 AM

CONT... David Allen and Kathleen Allen

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:17-11922 Hermilo Saavedra

Chapter 13

#14.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate ALL PROPERTY OF THE DEBTOR

MOVANT: HERMILO SAAVEDRA

EH__

Docket 13

Tentative Ruling:

4/4/17

Movant having provided sufficient evidence to rebut the presumption that the case was not filed in good faith, the Court is inclined to GRANT the motion and continue the automatic stay as to all creditors.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Hermilo Saavedra

Represented By
Rebecca Tomilowitz

Movant(s):

Hermilo Saavedra

Represented By
Rebecca Tomilowitz
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:17-11956 Ryan Jess Gomez

Chapter 13

#15.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1228 Shamrock Dr, Rialto, CA 92410

MOVANT:

EH__

Docket 17

Tentative Ruling:

4/4/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to §§ 362(d)(1) and (4), based on unauthorized transfers and multiple cases affecting the property. GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 5. Alternative request for adequate protection is DENIED as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ryan Jess Gomez

Represented By
Babak Samini

Movant(s):

CAM XIV TRUST, its successors

Represented By
Reilly D Wilkinson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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

Hearing Room 303

10:00 AM

6:17-12011 Joshua Lawrence Ferguson and Wendy Mae Ferguson

Chapter 13

#16.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 30662 Sky Terrace Dr Temecula CA .

MOVANT: JOSHUA FERGUSON

EH__

Docket 15

Tentative Ruling:

4/4/17

The Court is inclined to DENY the motion for the following reasons: (1) the motion states that the hearing is being set on regular notice, but Movant did not provide twenty-one days notice of the hearing; (2) the notice of the motion does not identify the affected parties, but instead simply states "[a]ll interested parties"; (3) lenders were not served per Rule 7004 as the motion was not served to the attention of an officer and was not sent by certified mail; (4) the motion does not explain with specificity what the issues with the prior plan were and how they have been remedied; and (5) the motion does not describe how the financial situation of Debtors has changed.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Joshua Lawrence Ferguson

Represented By
Stephen H Darrow

Joint Debtor(s):

Wendy Mae Ferguson

Represented By
Stephen H Darrow

**United States Bankruptcy Court
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10:00 AM

CONT... Joshua Lawrence Ferguson and Wendy Mae Ferguson

Chapter 13

Movant(s):

Wendy Mae Ferguson

Represented By
Stephen H Darrow

Joshua Lawrence Ferguson

Represented By
Stephen H Darrow

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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

Hearing Room 303

2:00 PM

6:14-23216 Bucur Rentals, LLC

Chapter 11

#17.00 CONT Order (1) Setting Scheduling Hearing And Case Management Conference And (2) Requiring Status Report re Post Confirmation Status Conference

From: 12/2/14, 3/3/15, 3/10/15, 3/31/15, 5/27/15, 6/3/15, 6/16/15, 6/22/15, 7/7/15, 7/21/15, 7/28/15, 9/22/15, 10/20/15, 12/8/15, 12/15/15, 3/1/16, 4/26/16, 9/6/16, 12/6/16

EH__

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bucur Rentals, LLC

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
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Tuesday, April 04, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#18.00 CONT First Omnibus Objection of Debtor-In-Possession Allied Injury Management, Inc. Seeking Disallowance of Certain Proofs of Claim

From: 11/8/16, 12/6/16, 1/10/17, 3/7/17

EH__

Docket 83

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
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Wednesday, April 05, 2017

Hearing Room 303

10:00 AM

6:16-20993 Osvaldo Solis

Chapter 7

#1.00 Pro se Reaffirmation Agreement Between Debtor and INOVA Federal Credit Union re 2014 Dodge Charger

EH__

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Osvaldo Solis

Represented By
Daniel King

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Wednesday, April 05, 2017

Hearing Room 303

10:00 AM

6:16-21025 Victor Jauregui, Jr and Melinda Monica Diaz

Chapter 7

#2.00 Reaffirmation Agreement Between Debtor and Ally Bank re 2013 Chevrolet Express

EH__

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victor Jauregui Jr Pro Se

Joint Debtor(s):

Melinda Monica Diaz Pro Se

Trustee(s):

Arturo Cisneros (TR) Pro Se

**United States Bankruptcy Court
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Wednesday, April 05, 2017

Hearing Room 303

10:00 AM

6:17-10083 Dominique Latrice Roberts

Chapter 7

#3.00 Pro se Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc.re 12 Dodge Challenger

EH__

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dominique Latrice Roberts

Pro Se

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, April 05, 2017

Hearing Room 303

10:00 AM

6:17-10221 JANELLE COLETTE PORTER

Chapter 7

#4.00 Pro se Reaffirmation Agreement Between Debtor and Nissan Motor Acceptance Corporation Re: 2016 Nissan Sentra

EH__

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JANELLE COLETTE PORTER

Represented By
Mark D Edelbrock

Trustee(s):

Larry D Simons (TR)

Pro Se

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10:00 AM

6:17-10788 Ashley Frances Brown

Chapter 7

#5.00 Reaffirmation Agreement Between Debtor and Hyundai Capital America dba Kia Motors Finance Re: 2015 Kia Optima

EH__

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ashley Frances Brown

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

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10:00 AM

6:17-11037 Gabriel Gonzalez

Chapter 7

#6.00 Motion for Approval of Reaffirmation Agreement with Kia Motors Finance re
2014 Kia Soul

EH__

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gabriel Gonzalez

Represented By
Daniel King

Movant(s):

KIA Motors Finance Company

Represented By
Cameron Johnson

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, April 05, 2017

Hearing Room 303

11:00 AM

6:10-46000 Jerold R Meints

Chapter 7

**#7.00 CONT Status Conference re District Court's order re fees
(HOLDING DATE)**

From: 2/8/17, 3/8/17

EH__

Docket 125

Tentative Ruling:

04/05/2017

The Status Conference is CONTINUED to April 26, 2017, at 11:00 a.m. as a holding date. The Court shall issue an amended order regarding fees ordered against Tunold and Kints in its September 29, 2014, order. Appearances are excused for the April 26, 2017, Status Conference.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Jerold R Meints

Represented By
Gene E O'Brien
Harold M Hewell

Trustee(s):

Helen R. Frazer (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, April 05, 2017

Hearing Room 303

11:00 AM

6:16-17280 Jesus Ramirez Guillen and Yovana Mondagron Guillen

Chapter 7

#8.00 CONT Motion Of U.S. Trustee For An Order Disgoring Fees, Assessing Damages, And Imposing Fines And Against Bankruptcy Petition Preparer Hugo Laguna Pursuant To 11 U.S.C. § 110
HOLDING DATE

From: 1/4/17

EH__

Docket 23

Tentative Ruling:

04/05/17

The US Trustee has indicated that a deposition of the alleged BPP, Laguna, is currently scheduled for April 19, 2017. Based on the ongoing settlement negotiations between the UST and Laguna, as well as the ongoing discovery efforts, the UST has requested a continuance of the hearing for 120 days for an evidentiary hearing. Absent objection by Laguna at the hearing, the Court is inclined to approve the UST's proposed briefing schedule and set an evidentiary hearing on July 10, 2017, at 11:00 a.m.

APPEARANCES REQUIRED. Telephonic appearance by the UST is approved.

Party Information

Debtor(s):

Jesus Ramirez Guillen

Pro Se

Joint Debtor(s):

Yovana Mondagron Guillen

Pro Se

Movant(s):

United States Trustee (RS)

Represented By
Mohammad Tehrani

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, April 05, 2017

Hearing Room 303

11:00 AM

CONT... Jesus Ramirez Guillen and Yovana Mondagron Guillen

Chapter 7

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, April 05, 2017

Hearing Room 303

11:00 AM

6:16-17769 Efren Diaz Estrada

Chapter 7

#9.00 Motion to Convert Case From Chapter 7 to 13

EH__

Docket 33

Tentative Ruling:

04/05/17

BACKGROUND

On August 30, 2016 ("Petition Date"), Efren Estrada ("Debtor"), filed his petition for chapter 7 relief. Charles Daff is the duly appointed chapter 7 trustee ("Trustee"). On December 12, 2016, the Debtor received a chapter 7 discharge.

On March 14, 2017 (or approximately 7 months after the Petition Date and post-discharge), the Debtors filed their motion for conversion of their case to a case under chapter 13 ("Motion"). On March 22, 2017, the Trustee filed opposition to the Debtors' Motion ("Opposition"). On March 29, 2017, the Debtors filed their reply ("Reply").

DISCUSSION

The Trustee argues that the Debtor's Motion should be denied because it has been filed in bad faith and because the Debtor's chapter 7 discharge precludes conversion pursuant to this Court's holding in *In re Santos*, 561 B.R. 825, 829 (C.D. Cal. 2017).

In response, the Debtor asserts that he will propose a chapter 13 plan that would pay the creditors whose debts have presumably already been discharged in this case. The only basis advanced by the Debtor to support his contention that a Debtor

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CONT... Efren Diaz Estrada

Chapter 7

can propose to pay already discharged debts in a post-discharge converted chapter 13 case is that a different Judge in the Central District permitted such conversion in another case known to Counsel for the Debtor. The Debtor, however, has not indicated the legal basis for this other court's ruling and such ruling would not be binding on this Court. Separately, the Court notes that although not expressly discussed in the Memorandum Decision on *Santos*, the Debtors in that case had also proposed to pay creditors whose debts had already been discharged at 100% through a confirmed chapter 13 plan. However, the bare promise that such a plan will be proposed where the Debtor's chapter 7 debts have already been discharged has no binding effect.

Having failed to distinguish *Santos*, the Court declines to reach the issues raised by the Trustee regarding alleged bad faith of the Debtor in failing to properly identify the nature of his interest in the Property.

TENTATIVE RULING

Based on the foregoing, and following the *Santos* holding, the Court finds that "cause" exists to deny the Debtor's request for conversion because the Debtor has received the benefits of a chapter 7 discharge and now seeks to avoid the concomitant burden of allowing the Trustee to administer the Debtor's assets for the benefit of creditors.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Efren Diaz Estrada

Represented By
W. Derek May

Movant(s):

Efren Diaz Estrada

Represented By
W. Derek May
W. Derek May
W. Derek May

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Wednesday, April 05, 2017

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CONT... Efren Diaz Estrada

Chapter 7

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Brianna L Frazier
Rika Kido

United States Bankruptcy Court
Central District of California
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Wednesday, April 05, 2017

Hearing Room 303

11:00 AM

6:16-18424 JORGE V LAZARO and YESSENIA M LAZARO

Chapter 7

#10.00 CONT Motion to Dismiss Chapter 7 Proceeding

From: 2/8/17, 3/8/17

Also #11

EH__

Docket 45

*** VACATED *** REASON: CONTINUED TO 5/10/17 AT 11:00 AM

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JORGE V LAZARO

Represented By
Daniel S March

Joint Debtor(s):

YESSENIA M LAZARO

Represented By
Daniel S March

Movant(s):

JORGE V LAZARO

Represented By
Daniel S March
Daniel S March

Trustee(s):

Todd A. Frealy (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
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Wednesday, April 05, 2017

Hearing Room 303

11:00 AM

6:16-18424 JORGE V LAZARO and YESSENIA M LAZARO

Chapter 7

#11.00 CONT Application to Employ Keller Williams Realty & KW Commercial as Real Estate Broker

From: 2/8/17, 3/8/17

Also #10

EH__

Docket 43

***** VACATED *** REASON: CONTINUED TO 5/10/17 AT 11:00 AM**

Tentative Ruling:

02/08/2017

BACKGROUND

On September 20, 2016, Jorge Lazaro and Yessenia Lazaro (collectively, "Debtors") filed their petition for chapter 7 relief. Todd Frealy is the duly appointed chapter 7 trustee ("Trustee"). Among the assets of the bankruptcy estate is certain real property located at 2021 Adrienne Dr. in Corona, CA (the "Property").

On January 5, 2017, the Trustee filed his Application to Employ Keller Williams Realty & KW Commercial ("Broker") as Real Estate Broker ("Application") in order to appraise, market, and sell the Property.

On January 19, 2017, the Office of the United States Trustee ("UST") filed a limited opposition to the alternative compensation structure proposed by the Trustee. Specifically, the Trustee proposed that if the Debtors purchased the estate's equity in the Property, the Broker would receive 6% of the sum paid to the Trustee (the "Alternative Compensation").

On February 1, 2017, the Trustee filed his Reply to UST's Opposition and indicated that he would withdraw his request for approval of the Alternative Compensation.

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CONT... **JORGE V LAZARO and YESSENIA M LAZARO**

Chapter 7

DISCUSSION

Pursuant to § 327(a), the trustee, subject to the court's approval, may employ professional persons, such as auctioneers, to perform services for the estate so long as that representation is not adverse to the estate and the professional is a disinterested person. Federal Rule of Bankruptcy Procedure ("F.R.B.P.") 2014 and Local Bankruptcy Rule ("L.B.R.") 2014-1 govern the employment of professional persons.

The Application is supported by the declaration of W. Darrow Fiedler, a licensed real estate broker with Broker. In his declaration, Mr. Fiedler sets forth the disinterestedness of the Broker and his acknowledgment that he cannot be paid without approval from the Bankruptcy Court. The evidence satisfies § 327(a). Additionally, the Court has evaluated the Notice of the Application and service and has determined that the Application complies with FRBP 2014 and LBR 2014.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the Application in its entirety as amended by the Reply, subject to the UST's confirmation that its concerns have been adequately addressed.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

JORGE V LAZARO

Represented By
Daniel S March

Joint Debtor(s):

YESSENIA M LAZARO

Represented By
Daniel S March

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CONT... JORGE V LAZARO and YESSENIA M LAZARO

Chapter 7

Movant(s):

Todd A. Frealy (TR)

Represented By
Anthony A Friedman

Trustee(s):

Todd A. Frealy (TR)

Represented By
Anthony A Friedman

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Hearing Room 303

11:00 AM

6:16-20003 Pamula Raye St Dennis

Chapter 7

#12.00 CONT Motion to Convert Case From Chapter 7 to 13

From: 3/8/17

EH__

Docket 26

*** VACATED *** REASON: CONTINUED TO 4/26/17 AT 11:00 AM

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pamula Raye St Dennis

Represented By
Cynthia A Dunning

Movant(s):

Pamula Raye St Dennis

Represented By
Cynthia A Dunning

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Melissa Davis Lowe
Elyza P Eshaghi
Brandon J Iskander

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Wednesday, April 05, 2017

Hearing Room 303

11:00 AM

6:17-11332 Marco Antonio Ibarra and Grazia Maria Elena Ibarra

Chapter 7

#13.00 Motion for Order Compelling Attorney to File Disclosure of Compensation Pursuant to 11 U.S.C. § 329 and Federal Rule of Bankruptcy Procedure 2016; Memorandum of Points and Authorities; Declaration of Abram S. Feuerstein in Support Thereof with Exhibits and Proof of Service

EH__

Docket 14

Tentative Ruling:

04/05/17

BACKGROUND

On February 22, 2017, Marco and Grazia Ibarra (collectively, "Debtors") filed their petition for chapter 7 relief. The petition reflects that the Debtors were assisted in the filing of the bankruptcy case by Jonathan Preston ("Counsel").

On February 28, 2017, the case was dismissed for failure of the Debtors to file schedules.

On March 13, 2017, the Office of the United States Trustee ("UST") filed its Notice of Motion and Motion for Order Compelling Attorney to File Disclosure of compensation Pursuant to 11 U.S.C. § 329 ("Motion"). Service was proper and the Motion is unopposed.

DISCUSSION

Section 329(a) provides, in pertinent part that:

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CONT...

Marco Antonio Ibarra and Grazia Maria Elena Ibarra

Chapter 7

Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation

11 U.S.C. § 329(a).

Here, the petition was filed by Counsel on behalf of the Debtors as evidenced by Counsel's signature and contact information as set forth on the bankruptcy petition (Ex. 2). As indicated by the UST, Counsel has not filed a disclosure of compensation as required pursuant to § 329(a). Additionally, pursuant to LBR 9013-1(h), Counsel is deemed to consent to the granting of the Motion because he failed to file any opposition or response the UST's Motion.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the Motion in its entirety. Counsel is ordered to file a Statement of Attorney Compensation within 30 days from entry of this order. Additionally, the Court shall retain jurisdiction over any matters arising from or related to section 329.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Marco Antonio Ibarra

Represented By
Jonathan R Preston

Joint Debtor(s):

Grazia Maria Elena Ibarra

Represented By
Jonathan R Preston

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CONT... Marco Antonio Ibarra and Grazia Maria Elena Ibarra

Chapter 7

Movant(s):

United States Trustee (RS)

Represented By
Abram Feuerstein esq

Trustee(s):

Lynda T. Bui (TR)

Pro Se

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Wednesday, April 05, 2017

Hearing Room 303

2:00 PM

6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#14.00 CONT Status Conference RE: Adversary case 6:13-ap-01171. Complaint by Charles Edward Schrader against Narinder Sangha . willful and malicious injury

From: 7/8/15, 11/4/15, 3/2/16, 12/14/16, 12/13/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Denise M Tessier
Deepalie M Joshi

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

2:00 PM

6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01199 Revere Financial Corporation v. Bank of Southern California, N.A.

#15.00 CONT Motion to Dismiss Second Amended Complaint

From: 3/22/17

EH__

Docket 41

Tentative Ruling:

04/05/2017

BACKGROUND

On July 29, 2016, Revere Financial Corporation ("RFC"), acting as Liquidating Trustee for the bankruptcy estate of Douglas J. Roger ("Debtor"), filed a complaint for avoidance and recovery of certain transfers made to Bank of Southern California, N.A. ("Defendant" or "BSC"), prepetition. On September 7, 2016, in response to a Motion to Dismiss filed by Defendant, RFC indicated its intent to exercise its right under FRCP 15 to file an amended complaint rather than file opposition to the Defendant's motion.

On September 21, 2016, RFC filed its First Amended Complaint (the "FAC"), alleging the following claims as to Defendant: (1) Intentional Fraudulent Transfer (Count One – Receiver Order); (2) Intentional Fraudulent Transfer (Count Two – Statutory); (3) Preferential Transfer; (4) Unjust Enrichment; and (5) Money Had and Received. At issue is a single August 28, 2013, transfer from OIC Medical Corporation ("OIC") to Defendant of \$408,947 (the "Transfer"). On December 13, 2016, the Court dismissed the FAC with leave to amend. On February 1, 2017, RFC filed its Second Amended Complaint (the "SAC"). The SAC and FAC allege the same claims against BSC based on the premise that OIC - the Debtor's wholly-owned and controlled medical corporation, held the Transfer solely for the Debtor's benefit or was a mere conduit for the Debtor's attempt to shield the Transfer from the receivership order entered in state court as to Dr. Roger's assets.

On February 28, 2017, BSC filed its Motion to Dismiss the SAC ("Motion").

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RFC filed opposition on March 8, 2017 ("Opposition") and a reply to the opposition was filed by BSC on March 15, 2017 ("Reply").

DISCUSSION

Consideration of Documents not attached to the FAC

BSC again asks this Court to take judicial notice of, or consider extrinsic documents, without converting the Motion into a motion for summary judgment. However, the Court reiterates the analysis set forth in the order granting the Motion to Dismiss the FAC (Docket No. 38) and again declines to consider the extrinsic documents referenced by BSC (as set forth below), and also for the reasons set forth in the Opposition:

Defendant urges this Court to consider certain extrinsic documents filed in connection with its Motion and provides authority for the proposition that such information may be considered without the need for conversion of the Motion to a motion for summary adjudication. However, the Court finds that RFC has adequately distinguished the cases cited by Defendant in support of its request for this Court to consider documents not attached to the FAC. In particular, Defendant has provided no evidence to support its assertion that RFC necessarily relied on the documents attached to its Motion in preparation of the FAC. RFC was also not a party to the documents and Defendant has otherwise failed to establish that RFC relied on the bank statements in crafting the FAC such that the documents may be considered without converting the Motion into a motion for summary judgment. Separately, the Court is disinclined at this early juncture to convert the Motion into a motion for summary judgment.

Likewise, the Court is unconvinced that the documents are of the type that are either "generally known" or "capable of accurate and ready determination" such that they are judicially noticeable documents under Rule 201 of the Federal Rules of Evidence.

In response to the arguments of RFC against permitting this Court to consider the extrinsic documents, Defendant asserts that *Lee v. City of*

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Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001), supports the Court's consideration of the documents. Specifically, Defendant asserts that the documents may be considered because BSC's "transaction history of OIC and DJRI accounts were alluded to in the [FAC] by reference to the cashier's checks and bank deposits – much like the reference to the extradition process in *Lee*." (Reply at 4:11-13). Defendant, however, misapprehends *Lee*. In *Lee*, the trial court took judicial notice of the (1) *fact* of the extradition hearing; and (2) the *fact* that a Waiver of Extradition was signed by the defendant. The trial court also relied on the validity of the Waiver of Extradition in dismissing the plaintiff's claim at the pleading stage. *Lee* at 690. The Ninth Circuit explicitly found that this last step exceeded what was permissible based on judicial notice because the trial court did more than just consider the *fact* of the Waiver but also took notice of the facts recited in another court's opinion as true. In doing so, the trial court controverted the 12(b)(6) requirement that it accept all allegations in the complaint as true and draw all reasonable inferences in plaintiff's favor. *Id.*

Here, Defendant is asking this Court to accept more than the existence of the bank statements. Defendant is asking the Court to take judicial notice of the transactions set forth in the statements, accept them as true, and further, accept as true the conclusions drawn from the statements by the Bank's Executive Vice President, Mr. Marshall. This *Lee* does not permit. Based on the foregoing, the Court declines to take judicial notice of, or consider, the documents attached to the Motion.

Order Granting Motion to Dismiss FAC, December 13, 2016.

Civil Rule 12(b)(6) standards

Under Civil Rule 12(b)(6), made applicable in adversary proceedings through Rule 7012, a bankruptcy court may dismiss a complaint if it fails to "state a claim upon which relief can be granted." In reviewing a Civil Rule 12(b)(6) motion, the trial court must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.

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2001). However, the trial court need not accept as true conclusory allegations in a complaint or legal characterizations cast in the form of factual allegations. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); *Hartman v. Gilead Scis., Inc. (In re Gilead Scis. Sec. Litig.)*, 536 F.3d 1049, 1055 (9th Cir. 2008).

To avoid dismissal under Civil Rule 12(b)(6), a plaintiff must aver in the complaint "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955). It is axiomatic that a claim cannot be plausible when it has no legal basis. A dismissal under Civil Rule 12(b)(6) may be based either on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. *Johnson v. Riverside Healthcare Sys.*, 534 F.3d 1116, 1121 (9th Cir.2008).

Transfer of an Interest in the Debtor's Property and Liability

The Court, in its tentative ruling on BSC's prior Motion to Dismiss, found that RFC could not prevail on its First through Fifth Claims for Relief because it had not alleged sufficient facts to set forth plausible claims where the funds at issue in the Transfer were transferred to BSC by OIC, not by the Debtor. In its prior analysis, the Court agreed with BSC that because OIC is a distinct legal entity from the Debtor, absent facts indicating that OIC did not have legal dominion over the funds at issue, RFC could not prevail in its claims. In the SAC, RFC has now added allegations in an effort to establish that OIC acted as the Debtor's agent or seeking to demonstrate that because OIC was controlled by the Debtor and directed by him, that the money deposited with OIC never became property of OIC and instead remained property of the Debtor.

In support of this contention, RFC cites to *In re Viola*, 469 B.R. 1, 6 (9th Cir. BAP 2012). RFC argues that the bare fact of OIC's separate legal identity is insufficient to undermine the allegations that OIC was acting as a "mere conduit" for the Debtor. However, the analysis in *Viola* undercuts RFC's argument. In *Viola*, the BAP discussed in detail the distinction between the "dominion test" and "control test" which are used by courts to determine whether an entity is a "mere conduit". In *Viola*, the BAP explains that the Ninth Circuit has adopted the **more restrictive** dominion test and not the "more lenient" control test:

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Under the control test, an examining court must evaluate a transaction in its entirety and make a "logical and equitable" determination as to whether "the banks actually controlled the funds or merely served as conduits, holding money that was in fact controlled by either the transferor or the real transferee." Therefore, while similar, "[t]he dominion test focuses on whether the recipient of funds has legal title to them and the ability to use them as he sees fit. The control test takes a more gestalt view of the entire transaction to determine who, in reality, controlled the funds in question."

Id. Here, the fact-intensive analysis advocated by RFC more closely aligns with the control rule. BSC's citation to *In re David L. Duckworth*, 2013 Bankr. LEXIS 1396, sets forth the better view, consistent with the Ninth Circuit's more restrictive interpretation. In *Duckworth*, the court found that the distinct legal entity at issue was not a "mere conduit" because

[it] was not a mere depository, agent, intermediary or trustee whose legal authority over the funds was limited by some agreement or statute ... As a validly formed and existing limited liability company, it had the authority to own and expend the funds for its own purposes. That the Debtor caused the funds to be expended for his personal benefit is not material to the dominion and control inquiry, which focuses on the entity's power over the funds.

Id. Similarly, here, RFC has advanced no factual allegation or legal theories to undercut the legal authority of OIC over the Transfer, irrespective of whether the Debtor as a principal of the company directed some improper use of the funds. RFC's remaining counter-examples similarly fail. The bank referenced in *In re M. Blackburn Mitchell Inc.*, 164 B.R. 117, 131 (Bankr. N.D. Cal. 1994), never held title to the funds at issue and its role was instead limited to issuance of a cashier's check. The law firm in *In re Fabric Buys of Jericho, Inc.*, 33 B.R. 334 (Bankr. S.D.N.Y. 1983), never held title to the funds at issue in that case. Instead, the funds deposited into with the law firm were placed into an escrow account which by its nature would have prevented the law firm from exercising dominion over the funds. These examples all contrast with the facts of the instant case, wherein RFC has alleged no facts indicating a legal

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agreement or other restriction on OIC's dominion over the funds.

Finally, RFC references *In re Incomnet, Inc.*, 463 F.3d 1064, 1071 (9th Cir. 2006), and based thereon argues (assuming, arguendo, that Dr. Roger gave explicit direction to Nicole Ebarb or other Roger Agents to deposit the funds in OIC's bank account on behalf of Dr. Roger and for his benefit) OIC would not have had "dominion" over the funds. (SAC, ¶¶ 24-25). However, the bare allegations in the SAC indicating that the funds deposited with OIC were being held on behalf of Dr. Roger by OIC are insufficient. The example which RFC hopes to illustrate is one which the Ninth Circuit described as "when an entity has legal title as a formal matter, but legally does not have discretion in the application of funds." Here, in contrast to the example of the bank which receives a direction from the client to deposit funds into a specific account, there are no facts to indicate that OIC received any direction to segregate the funds allegedly deposited by Ebarb for the benefit of Dr. Roger. Based on the foregoing, the Court is inclined to find that RFC has failed to assert sufficient facts to plausibly claim that the Debtor, and not OIC, had dominion over the funds at issue based on a "mere conduit" theory.

Resulting Trust Theory

Separately, in a footnote, RFC raised the possibility that a "resulting trust" was created as between OIC and the Debtor such that the Debtor retained an interest in the funds that were eventually transferred to BSC. (Opp'n at p. 13, fn 6). "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." *Concorde Equity II, LLC v. Miller*, 732 F. Supp. 2d 990, 1002 (N.D. Cal. 2010). Based on the Court's limited review of RFC's "resulting trust" theory, and the factual support contained in the SAC indicating that the Debtor directed funds deposited in OIC to be used on his behalf and that OIC held and then used the funds to pay BSC on the Debtor's behalf, it appears that RFC may be able to sufficiently allege a plausible legal theory on which RFC could demonstrate that despite OIC's legal title or dominion over the funds, the Debtor retained an equitable interest in the Property such that the SAC is plausible. BSC's response indicating that RFC's "resulting trust" theory has been waived is unsupported. Here, however, the SAC does not allege the existence of a resulting trust, and for that reason grounds exist to DISMISS the First, Second and Third Claims, albeit with leave to amend.

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Earmarking Doctrine

BSC alleges that to the extent the Court finds that OIC held the Debtor's funds to pay down his debts, the earmarking doctrine applies. The earmarking doctrine essentially provides that where a third person makes a loan to a debtor to enable him to satisfy the claim of another creditor, the new creditor simply steps into the shoes of the old creditor and thus the funds exchanged can be found never to have become an asset of the estate. (Motion, p. 24). On this point, the Court agrees with RFC that the determination of whether the earmarking doctrine applies requires evidence and a factual determination regarding the character of the Transfer and specifically, whether it constitutes a loan to the Debtor or as alleged in the SAC, whether it was a transfer of property of the Debtor. BSC is free to raise the earmarking doctrine as an affirmative defense in its answer.

Unjust Enrichment

BSC asserts that RFC cannot maintain a claim for unjust enrichment because California courts do not recognize a standalone claim for unjust enrichment. However, the Ninth Circuit Court of Appeals recently interpreted California law on this point and held that, when faced with a claim for relief alleging unjust enrichment, district courts ordinarily should treat the claim for relief "as a quasi-contract claim seeking restitution." *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir.2015).

Restitution may be awarded where the defendant obtained a benefit from the plaintiff by fraud, duress, conversion, or similar conduct. In such cases, the plaintiff may choose not to sue in tort, but instead to seek restitution on a quasi-contract theory (an election referred to at common law as "waiving the tort and suing in assumpsit"). In such cases, where appropriate, the law will imply a contract (or rather, a quasi-contract), without regard to the parties' intent, in order to avoid unjust enrichment. *McBride v. Boughton*, 123 Cal. App. 4th 379, 388 (2004) (internal citations omitted). As to the quasi-contract claim, the Court agrees with BSC that cases applying this equitable doctrine have typically found that the party that received the benefit was the party which perpetrated the fraud, duress, conversion etc. As RFC has not provided any authority that this claim may lie when the fraud is perpetrated by the party that deposited or paid out the money, the Court is inclined to GRANT the Motion as to the Fourth Claim for Unjust Enrichment because the SAC does not allege wrongdoing by BSC.

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CONT... **Douglas Jay Roger**
Money had and received

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"A cause of action is stated for money had and received if the defendant is indebted to the plaintiff in a certain sum 'for money had and received by the defendant for the use of the plaintiff.'" *Gutierrez v. Girardi*, 194 Cal. App. 4th 925, 937, 125 Cal. Rptr. 3d 210, 219 (2011).

This common count is available in a great variety of and "lies wherever one person has received money which belongs to another, and which in equity and good conscience should be paid over to the latter." *Id.* (internal citations omitted). Here, the allegations of the SAC are sufficient to maintain a claim. Specifically, where RFC has alleged that BSC received funds which properly belong to the estate, the policies underlying the bankruptcy system support a plausible claim that equity would be satisfied by return of those funds to the Debtor's creditors for pro rata distribution. As such, the Court is inclined to DENY the Motion as to the Fifth Claim.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT in part and DENY in part as follows:

GRANT as to the First, Second and Third Claims, with leave to amend;

GRANT as to the Fourth Claim without leave to amend; and

DENY as to the Fifth Claim.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Bank of Southern California, N.A.

Represented By
Kathryn M.S. Catherwood

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CONT... Douglas Jay Roger

Chapter 7

Movant(s):

Bank of Southern California, N.A.

Represented By

Kathryn M.S. Catherwood

Kathryn M.S. Catherwood

Kathryn M.S. Catherwood

Kathryn M.S. Catherwood

Plaintiff(s):

Revere Financial Corporation

Represented By

Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By

Laurel R Zaeske

Arjun Sivakumar

Carmela Pagay

Franklin R Fraley Jr

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6:14-16872 William Redfield Barlow, III

Chapter 7

Adv#: 6:17-01021 Whitmore v. E*Trade Securities, LLC et al

#16.00 Status Conference Re: Complaint by Robert Whitmore against E*Trade Securities, LLC. (Charge To Estate - \$350.00). Complaint for Turnover of Property of the Bankruptcy Estate (Attachments: # 1 Adversary Proceeding Cover Sheet # 2 Summons and Notice of Status Conference) Nature of Suit: 11-Recovery of money/property - 542 turnover of property

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Redfield Barlow III

Represented By
Michael E Clark
Heather J Canning

Defendant(s):

E*Trade Financial Corporation

Pro Se

E*Trade Securities, LLC

Pro Se

Joint Debtor(s):

Lindsay Marie Barlow

Represented By
Michael E Clark
Heather J Canning

Plaintiff(s):

Robert Whitmore

Represented By
Julie Philippi

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CONT... William Redfield Barlow, III

Chapter 7

Trustee(s):

Robert Whitmore (TR)

Represented By
Julie Philippi
Todd L Turoci

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6:14-17350 Dean L. Springer, Sr.

Chapter 7

Adv#: 6:16-01144 Simons v. Chathan Law Group

#17.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01144. Complaint by Larry D Simons against Chathan Law Group (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))

From: 9/7/16, 12/7/16, 2/8/17, 3/22/17

EH __

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr. Pro Se

Defendant(s):

Chathan Law Group Pro Se

Joint Debtor(s):

Tami Jo Springer Pro Se

Plaintiff(s):

Larry D Simons Represented By
Sarah Cate Hays
D Edward Hays

Trustee(s):

Larry D Simons (TR) Represented By
Richard A Marshack

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CONT...

Dean L. Springer, Sr.

Sarah Cate Hays
D Edward Hays

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6:15-18887 Manors San Bernardino Ave LLC

Chapter 7

Adv#: 6:16-01148 Pringle v. O. Allen Alpay, Trustee of the Alpay Living Trust

#18.00 CONT Motion to Dismiss, Strike or Stay Alpay's Cross-Claim

From: 1/11/17, 1/24/17, 2/8/17, 3/22/17

Also #

EH__

Docket 86

Tentative Ruling:

04/05/17

BACKGROUND

On September 8, 2015, an involuntary bankruptcy petition was filed by Norman Musselman, Erwin Seifert, and Gouvis Engineering Consulting Group ("Petitioning Creditors") as against Manors San Bernardino Ave LLC ("Debtor"). John Pringle is the duly appointed chapter 7 trustee ("Trustee"). The Debtor is a California Corporation.

On June 06, 2016, the Trustee filed an adversary complaint against O. Allen Alpay, Trustee of the Alpay Living Trust dated October 18, 1996 ("Alpay"); and Manors Construction and Development Co., Inc., a California Corporation ("MCD") (collectively, "Defendants"), to determine the validity, priority or extent of lien and for declaratory relief (the "Complaint").

The Complaint alleged that, prepetition, the Debtor owned real property comprising approximately 3.116 acres commonly referred to as 16803-16829 San Bernardino Ave in the City of Fontana (the "Property"). The Trustee further alleged that on April 12, 2012, a trust deed was recorded encumbering the Property in favor of Alpay as Doc. No. 2012-0140286 (the "Alpay DOT"). The dispute arises from the facts surrounding the validity of the Alpay DOT. Specifically, the Trustee alleged that the Alpay DOT indicates it was executed on behalf of the Debtor "By: Manors Development & Construction, Inc., a California corporation, Manager" (note: the

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individual signatory was Paul Minnick as "President"). However, the Trustee asserts that (1) at all times relevant, there was no entity registered with the California Secretary of State as "Manors Development & Construction, Inc." (2) that the correct entity intended to execute the Alpay Trust Deed was MCD; and (3) that MCD had been suspended by the California Franchise Tax Board, effective May 3, 2010, pursuant to a notice of suspension ("Suspension Notice") which provided that its "rights, powers, and privileges" were suspended or forfeited as of the date of the notice.

The Complaint was dismissed on October 11, 2016, with leave to amend. On October 24, 2016, the Trustee filed a First Amended Complaint (the "FAC"). Subsequently, Alpay filed a cross-complaint against the Debtor, Paul Minnick, MCD, MCG, Norman Musselman, Erwin Seifert, and "[p]ersons unknown, claiming any legal or equitable right, title, etc. in the Property", and moved to dismiss the FAC. On March 6, 2017, the Court granted the Motion to Dismiss but permitted the Trustee leave to amend the FAC. On the same date, the Court indicated its intent to deny the Motion to Dismiss Alpay's cross-complaint as moot based on the procedural impropriety of filing a cross-complaint prior to the filing of an answer. Separately, the Court continued the hearing on the Motion to Dismiss Alpay's cross-complaint for the parties to provide supplemental briefing on the Trustee's argument that Alpay's cross-complaint should be stricken as to the Trustee because such cross-complaint constitutes a violation of California's anti-SLAPP statute.

DISCUSSION

California's "anti-SLAPP statute was enacted to allow early dismissal of meritless first amendment cases aimed at chilling expression through costly, time-consuming litigation." *Zamani v. Carnes*, 491 F.3d 990, 994 (9th Cir. 2007). California's anti-SLAPP statute provides a burden-shifting mechanism to weed out "lawsuits that 'masquerade as ordinary lawsuits' but are brought to deter common citizens from exercising their political or legal rights or to punish them for doing so." *Batzel v. Smith*, 333 F.3d 1018, 1024 (9th Cir. 2003) (quoting *Wilcox v. Superior Court*, 27 Cal.App.4th 809, 816, 33 Cal.Rptr.2d 446 (1994)). In *Makaeff v. Trump Univ., LLC*, 715 F.3d 254, 261 (9th Cir. 2013), the Ninth Circuit explained that:

To prevail on an anti-SLAPP motion, the moving defendant must make a prima facie showing that the plaintiff's suit arises from an act in

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furtherance of the defendant's constitutional right to free speech.... The burden then shifts to the plaintiff, ... to establish a reasonable probability that it will prevail on its claim in order for that claim to survive dismissal. Cal. Civ. Proc. Code § 425.16(b)(1); Under this standard, the claim should be dismissed if the plaintiff presents an insufficient legal basis for it, or if, on the basis of the facts shown by the plaintiff, "no reasonable jury could find for the plaintiff." *Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 840 (9th Cir. 2001) (citation and internal quotation marks omitted). 715 F.3d at 261 (first citation omitted).

Manzari v. Associated Newspapers Ltd., 830 F.3d 881, 886–87 (9th Cir. 2016).

The basis for the Trustee's Anti-Slapp argument is that the Cross-complaint filed by Alpay essentially seeks to punish the Trustee for filing a lis pendens against the Property. The Court does not agree with the Trustee's interpretation of the Cross-complaint. Instead, the crux of Alpay's Cross-complaint focuses on the allegedly fraudulent nature of the deeds of trust/debts recorded by or in favor of Paul Minnick, Norman Musselman, and Erwin Seifert, as well as their efforts in filing the involuntary petition that brought the Debtor into bankruptcy. The primary support for the Trustee's Anti-Slapp argument is based on ¶ 49 of the Cross-Complaint which provides as follows:

49. Alpay is informed and believes and thereon alleges that the Adversary Complaint was advanced as a strategic effort to advance a fraudulent scheme in order to: (1) invalidate Alpay's deed in order for Minnick, Musselman and Seifert's deeds to take priority over payment; and/or (2) as a tool to be utilized to manipulate Alpay into capitulating to taking less money than the total debt owed ...).

(Cross-complaint, ¶49).

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Here, in asserting that the filing of the Adversary Complaint was itself a part of the alleged fraudulent scheme, the Cross-complaint inartfully appears to insinuate the Trustee's actions were also a part of that fraud. However, that Alpay did not name the Trustee as a cross-defendant and that the remainder of the Cross-complaint centers on the actions of Musselman, Seifert, and Minnick indicates that the better reading of the Cross-Complaint is that Alpay did not intend to bring suit against the Trustee or otherwise attempt to chill lawful expression by the Trustee. Nor is the Court persuaded by Trustee that the naming of the Debtor in the Cross-complaint necessarily implicates the Trustee's postpetition actions in filing the adversary proceeding and *lis pendens*.

Based on the foregoing, the Court is inclined to DENY the Trustee's Motion to the extent that it seeks to have this Court find that the Cross-Complaint violates California's anti-SLAPP statute.

The Court also finds that Alpay's inartful drafting prompted the Trustee's filings because ¶49 can be reasonably read to imply a fraudulent purpose in the filing of the instant adversary proceeding by the Trustee. On this basis, the Court denies Alpay's request for fees and sanctions against the Trustee based on its assertion that the Trustee's anti-SLAPP argument is an attempt to harass, annoy or cause delay.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to DENY the Trustee's Motion to Dismiss the Cross-complaint as moot for the reasons stated on the record at the prior hearing, and separately rules that the Trustee has failed to establish that the Cross-complaint of Alpay constitutes a violation of California's anti-SLAPP statute.

APPEARANCES REQUIRED.

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02/08/17

MOTION TO DISMISS CROSS-COMPLAINT

On November 17, 2016, Alpay filed a cross-complaint against Paul Minnick, the Debtor, Manors Construction & Development, Inc., Norman Musselman, and Erwin Seifert (the "Cross-Complaint"). The Cross-Complaint alleges, in pertinent part, that Paul Minnick abused his official positions at MCD/MDC and at MCG Development Co, Inc. (managers of the Debtor during the relevant period), to advance a conspiracy with Defendants Musselman and Seifert by which fraudulent liens were attached to the Property on the basis of fraudulent debts. On April 6, 2015, Alpay initiated a non-judicial foreclosure of the Property. Subsequently, on or about September 8, 2015, Defendants Musselman and Seifert initiated an involuntary chapter 7 petition as to the Debtor, thereby postponing the foreclosure sale. Alpay alleges that the bankruptcy filing was an attempt by the Defendants to postpone the sale to permit them additional time to attempt to market and sell the Property in order to profit from the fraudulent deeds of trust encumbering the Property. Finally, Alpay alleges that the filing of the Adversary Complaint is itself a part of the fraudulent scheme of Minnick Musselman and Seifert.

The Cross-Complaint alleges the following claims against all Cross-Defendants: (1) Fraud and Conspiracy; (2) Declaratory Relief; and (3) Cancellation of Deeds or Rescissions. On December 19, 2016, the Trustee filed his Motion to Dismiss, Strike or Stay Alpay's Cross-Claim. (the "Motion").

DISCUSSION

FRCP 12 and 13 provide that both compulsory and permissive counterclaims and crossclaims must be stated in a "pleading" and the only pleading permitted in response

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to a complaint is an "answer." FRCP 13(a)(1) & (b).

FRCP 7 lists each pleading permitted under the Federal Rules and does not include a standalone counterclaim or crossclaim as a pleading:

(a) Pleadings. Only these pleadings are allowed:

- (1) a complaint;
- (2) an answer to a complaint;
- (3) an answer to a counterclaim designated as a counterclaim;
- (4) an answer to a crossclaim;
- (5) a third-party complaint;
- (6) an answer to a third-party complaint; and
- (7) if the court orders one, a reply to an answer.

As such, the filing of a motion to dismiss (but where Alpay has not filed an answer) does not allow Alpay to file a counterclaim or crossclaim. *See National Ass'n of Gov. Employees, Inc. v. National Emergency Med. Services Ass'n, Inc.*, 969 F.Supp.2d 59, 67(D. Mass. 2013); *Bernstein v. IDT Corp.*, 582 F. Supp. 1079, 1089 (D. Del. 1984).

TENTATIVE RULING

Based on the foregoing, the Court is inclined to DENY the Motion to Dismiss the Cross-Complaint as moot, given the Court's determination that the filing of the Cross-Complaint (Docket No. 62) was prematurely filed by Alpay in contravention of the Federal Rules of Civil Procedure.

APPEARANCES REQUIRED.

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Debtor(s):

Manors San Bernardino Ave LLC

Represented By
Gaurav Datta

Defendant(s):

Manors Construction &

Pro Se

O. Allen Alpay, Trustee of the Alpay

Represented By
Stephen B Goldberg
Renee De Golier
John L Bailey

Movant(s):

John P Pringle (TR)

Represented By
Scott Talkov

John P. Pringle

Represented By
Scott Talkov
Douglas A Plazak

Plaintiff(s):

John P. Pringle

Represented By
Scott Talkov
Douglas A Plazak

Trustee(s):

John P Pringle (TR)

Represented By
Larry D Simons
Scott Talkov
Frank X Ruggier

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6:15-18887 Manors San Bernardino Ave LLC

Chapter 7

Adv#: 6:16-01148 Pringle v. O. Allen Alpay, Trustee of the Alpay Living Trust

#19.00 CONT Status Conference RE: Crossclaim by O. Allen Alpay, Trustee of the Alpay Living Trust dated October 18, 1996 against Erwin L. Seifert, Norman A. Musselman, MCG Development Co., Inc., Manors San Bernardino Avenue LLC, Manors Construction & Development Co., Inc., Paul Minnick

From: 1/11/17, 1/24/17, 2/8/17, 3/22/17

Also #

EH__

Docket 62

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manors San Bernardino Ave LLC

Represented By
Gaurav Datta

Defendant(s):

Manors Construction &

Pro Se

O. Allen Alpay, Trustee of the Alpay

Represented By
Stephen B Goldberg
Renee De Golier
John L Bailey

Plaintiff(s):

John P. Pringle

Represented By
Scott Talkov
Douglas A Plazak

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Trustee(s):

John P Pringle (TR)

Represented By
Larry D Simons
Scott Talkov
Frank X Ruggier

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6:16-16191 Sheri Tanaka Christopher

Chapter 7

Adv#: 6:17-01028 Frealy, Chapter 7 Trustee v. Tanaka et al

#20.00 Status Conference RE: [1] Adversary case 6:17-ap-01028. Complaint by Todd A Frealy, Chapter 7 Trustee against Ronald Howard Tanaka, Carolyn Naomi Tanaka, Ryan Satoshi Tanaka, Leora Linda Tanaka, Estate of Yaeko Sato, a California Probate Estate. (Charge To Estate). Complaint for: (1) Sale of Real Property Pursuant to 11 U.S.C. § 363(h); and (2) Turnover of Property of the Estate Pursuant to 11 U.S.C. § 542 (Attachments: # 1 Adversary Proceeding Cover Sheet) 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))

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sheri Tanaka Christopher

Represented By
Brian J Soo-Hoo

Defendant(s):

Leora Linda Tanaka

Represented By
David L Prince

Estate of Yaeko Sato, a California

Represented By
David L Prince

Ryan Satoshi Tanaka

Represented By
David L Prince

Ronald Howard Tanaka

Represented By
David L Prince

Carolyn Naomi Tanaka

Represented By

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CONT... Sheri Tanaka Christopher

Chapter 7

David L Prince

Plaintiff(s):

Todd A Frealy, Chapter 7 Trustee

Represented By
Monserrat Morales

Trustee(s):

Todd A. Frealy (TR)

Represented By
Monserrat Morales

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6:16-17389 William Mark Eddington

Chapter 7

Adv#: 6:17-01002 BOSNIAN WAND AIRLINES v. Eddington

#21.00 CONT Motion to Dismiss Adversary Proceeding or in the alternative, motion to strike and for a more definite statement

From: 3/22/17

Also #

EH__

Docket 5

Tentative Ruling:

04/05/2017

BACKGROUND

On August 18, 2016 (the "Petition Date"), William Mark Eddington ("Debtor") filed his petition for chapter 7 relief. The deadline for objections to the Debtor's discharge was set as March 31, 2017.

On January 5, 2017, Bosnian Wand Airlines ("Plaintiff") filed a complaint objecting to the Debtor's discharge pursuant to § 727(d)(1) and § 523(a)(2) for fraud, or under § 523(a)(4) for fraud while acting in a fiduciary capacity, or for embezzlement (the "Complaint"). The Complaint alleges, in pertinent part, that:

1. Defendant Debtor interchangeably represented himself to Plaintiff as either LLFC Corporation or Laserline Lease Finance Corporation (Compl. ¶2);
2. Plaintiff and Debtor entered into a letter of intent, dated March 23, 2015, signed by Debtor as President of LLFC Corporation, located in Palm Springs, California. Pursuant to the terms of the Letter of Intent (LOI), Plaintiff provided Debtor with a \$186,000 refundable deposit. (Id. at ¶3);
3. Contrary to the representations by Debtor, neither LLFC Corporation nor its alter ego, Laserline Lease Finance Corporation, were registered to do business in California (Id. at ¶4);
4. At Debtor's express request, relying upon Debtor's intentional fraudulent misrepresentations as to the Debtor's identity and his ability to perform under

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contract, Plaintiff provided Debtor with the \$186,000 deposit for Debtor to hold in trust (Id. at ¶6);

5. Debtor as trustee of Plaintiff's deposit, owed Plaintiff a fiduciary duty to ensure that Plaintiff's funds were kept safe and separate from Debtor's various business accounts and not to use Plaintiff's funds for personal expenses, operating expenses, salaries, or other misuse (Id. at ¶8);
6. When it became apparent that the subject transaction would not be performed, Plaintiff requested that Debtor refund the deposit (Id. at ¶9);
7. Debtor ignored all requests for a refund and it was determined that Debtor had interchangeably held himself out as two entities ... neither of which was legally operating or otherwise registered to do business in California (Id. at ¶ 10);
8. Debtor verbally stated to Plaintiff's US agent, Mr. Ray Nazemi, that Debtor could not return Plaintiff's \$186,000 refundable deposit because Debtor had used the funds to pay off other debts (Id. at ¶13).

On February 21, 2017, the Debtor filed a motion to dismiss the complaint or in the alternative to strike and for a more definite statement ("Motion").

On March 6, 2017, Plaintiff filed his opposition to the Motion ("Opposition"). On March 15, 2017, the Debtor replied ("Reply").

DISCUSSION

The arguments advanced by the Debtor as to why the Complaint should be dismissed are as follows: (1) that pursuant to California Civil Code, Section 1624, there was no written agreement obligating the Debtor to pay the obligations of LLFC and the Debtor was not a guarantor, thus there is no liability as to the Debtor; (2) allegations made on information and belief are insufficient; (3) allegations that the Debtor failed to give notice of the bankruptcy do not support revocation; (4) the Complaint is insufficient on its face because it fails to plead fraud with specificity; and (5) allegations related to § 548 should be stricken as immaterial and inappropriate.

Civil Rule 12(b)(6) standards

Under Civil Rule 12(b)(6), made applicable in adversary proceedings through Rule 7012, a bankruptcy court may dismiss a complaint if it fails to "state a claim upon which relief can be granted." In reviewing a Civil Rule 12(b)(6) motion, the trial

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court must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). However, the trial court need not accept as true conclusory allegations in a complaint or legal characterizations cast in the form of factual allegations. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); *Hartman v. Gilead Scis., Inc. (In re Gilead Scis. Sec. Litig.)*, 536 F.3d 1049, 1055 (9th Cir. 2008).

To avoid dismissal under Civil Rule 12(b)(6), a plaintiff must aver in the complaint "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955). It is axiomatic that a claim cannot be plausible when it has no legal basis. A dismissal under Civil Rule 12(b)(6) may be based either on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. *Johnson v. Riverside Healthcare Sys.*, 534 F.3d 1116, 1121 (9th Cir.2008).

First Claim for Relief: § 727(d)(1)

Bankruptcy Code § 727(d)(1) provides:

- (d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—
 - (1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge.

"As a general rule, to obtain relief under § 727(d)(1), the plaintiff must prove that the debtor committed fraud in fact The fraud must be proven in the procurement of the discharge and sufficient grounds must have existed which would have prevented the discharge." *In re Bowman*, 173 B.R. 922, 925 (9th Cir.BAP1994) (internal citations omitted).

On its face, the Plaintiff's first claim for relief must fail because the Debtor has not yet obtained a discharge and section 727(d)(1) specifically contemplates a situation in which the Debtor has already procured such discharge prior to the filing of the complaint. On this basis, the Court is inclined to GRANT the Motion as to the

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First Claim for Relief and dismiss BWA's § 727 claim.

Section 1624: The Debtor's liability on a debt owed by LLFC

The Debtor asserts that since the LOI on which BWA brings its suit was between BWA and LLFC, and since the Debtor was not a guarantor on the debt, that BWA cannot assert there is liability as to the Debtor. BWA, in response, asserts that (1) the LOI is binding on the Debtor because he became a fiduciary when he requested the deposit; (2) LLFC and Laserline Lease Finance Corp. do not exist and cannot do business in California; and (3) California Civil Code § 2794 is an exception to noncompliance with Section 1624.

BWA's arguments fail for several reasons: First, there is no legal authority provided for the proposition that the Debtor became a "fiduciary" under California law as asserted by BWA. Second, the evidence attached to the State Court Complaint of BWA indicates that LLFC and Laserline Lease Finance Corp. did exist and the State Court Complaint includes an Affidavit of the Debtor in which he explains that LLFC was organized under Utah law but subsequently dissolved at the end of 2016. Thus, based on the existence of LLFC as a corporate entity, it appears that to prevail on its claims BWA must amend its Complaint to properly allege a basis or bases upon which the corporate fiction should be disregarded and liability held against the Debtor personally. Finally, as to section 2794, BWA has failed to provide authority or analysis of this code provision which would permit the Court to apply it to the facts of this case. Based on the foregoing, and finding primarily that the Complaint fails to adequately set forth a legal or factual basis to disregard the corporate fiction and hold the Debtor personally liable for funds paid to LLFC by BWA, under an alter ego theory or otherwise, the Court is inclined to find that the Motion should be GRANTED and the Complaint dismissed with leave to amend.

Second Claim for Relief: § 523(a)(2)(A), Fraud

Section 523(a)(2)(A) provides that

(a) A discharge under section 727 ... 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

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statement respecting the debtor's or an insider's financial condition;

11 U.S.C. § 523(a)(2)(A).

It is well-settled that a creditor alleging actual fraud must prove five elements: (1) the debtor made a material misrepresentation, (2) with knowledge of its falsity, (3) with the intent to deceive, (4) on which the creditor relied, and (5) due to which the creditor sustained loss or damage. *In re Kirsh*, 973 F.2d 1454, 1456 (9th Cir.1992); *In re Britton*, 950 F.2d 602, 604 (9th Cir.1991); *In re Rubin*, 875 F.2d 755, 759 (9th Cir.1989).

Allegations regarding fraud are subject to a heightened pleading standard. Civil Rule 9(b), made applicable to adversary proceedings by Rule 7009, requires that a plaintiff must state "with particularity the circumstances constituting fraud...." The Ninth Circuit has provided guidance for the "with particularity" requirement by stating that to comport with Civil Rule 9(b) the complaint must (1) specify the averred fraudulent representations; (2) aver the representations were false when made; (3) identify the speaker; (4) state when and where the statements were made; and (5) state the manner in which the representations were false and misleading. *Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.*, 940 F.2d 397, 405 (9th Cir.1991).

As a threshold matter, as set forth above, having failed to join LLFC and Laserline or to assert a claim that would establish personal liability as to the Debtor, the Complaint cannot sustain a claim under § 523 because BWA has not set forth the basis for a debt owed by the Debtor. Separately, as to fraud more generally, the Complaint sets forth allegations indicating that the Debtor misrepresented the authority of LLFC Corporation and/or Laserline Lease Finance Corporation (the "Companies") to conduct business in California as well as the ability of the Debtor to perform under the LOI. However, the Complaint does not draw a factual link between the Debtor's alleged misrepresentations regarding the Companies' ability to conduct business and the how those misrepresentations caused BWA to sustain a loss or damage. Nor does the Complaint allege the time and place of alleged misrepresentations with the specificity required by Rule 9(b). For this additional reason, the Court is inclined to GRANT the Motion and dismiss the Complaint with leave to amend.

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Third Claim for Relief: § 523(a)(4), Fraud while acting in a fiduciary capacity or embezzlement

The Complaint does not clearly set forth the bases for its claim under § 523(a)(4). However, based on the language of the prayer for relief, and the frequent references to fraud and to the Debtor's alleged fiduciary capacity, BWA appears to be proceeding under a claim for fraud while acting as a fiduciary and separately, as to embezzlement.

A. Fraud while acting in a fiduciary capacity

Section 523(a)(4) provides in relevant part that a discharge under section 727 does not discharge an individual debtor from any debt for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny. 11 U.S.C. § 523(a)(4).

First, whether a relationship is a "fiduciary" one within the meaning of section 523(a)(4) is a question of federal law. *Ragsdale v. Haller*, 780 F.2d 794, 795 (9th Cir.1986). The broad, general definition of "fiduciary" is inapplicable in the dischargeability context. *Id.* at 796. Instead, the fiduciary relationship must be one arising from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt. *Id.* In other words, the debtor must have been a trustee before the alleged wrongdoing occurred. Here, BWA has failed to present sufficient facts or legal authority to indicate that any such fiduciary relationship existed between the Debtor and BWA.

B. Embezzlement

For purposes of the nondischargeability statute, a claim based on embezzlement requires proof of:

(1) property rightfully in the possession of a nonowner; (2) nonowner's appropriation of the property to a use other than that which it was entrusted, and (3) circumstances indicating fraud.

Transam. Comm'l Fin. Corp. v. Littleton (In re Littleton), 942 F.2d 551, 555 (9th Cir.1991).

As to embezzlement, the Complaint asserts that the Debtor was rightfully in possession of the deposited funds because he was a principal of LLFC at the time that funds were deposited by BWA in furtherance of the business dealing embodied in the

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LOI. BWA has also asserted that the Debtor appropriated the funds deposited by BWA for a use other than that which it was entrusted – namely, to pay other debts or corporate expenses. However, as with its other claims, the Complaint fails to adequately describe circumstances indicating fraud. For these reasons, the Court is inclined to GRANT the Motion and dismiss the Complaint with leave to amend.

TENTATIVE RULING

Based on the foregoing, including the lack of clear notice as to which claims BWA is pursuing against the Debtor, the Court is inclined to GRANT the Motion. The Complaint shall be dismissed in its entirety with leave to amend, with any amended complaint to be filed within 30 days of entry of the order granting the Motion.

Separately, on a 12(b)(6) motion, the Court is called only to consider the plausibility of the Complaint, not the weight of the evidence. Such an analysis is inappropriate on a motion to dismiss. For this reason, the evidentiary objections to the declaration of John Geffen are overruled without prejudice. The Debtor may raise these objections again on a motion for summary judgment or at trial.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

William Mark Eddington

Represented By
Jenny L Doling

Defendant(s):

William Mark Eddington

Represented By
Summer M Shaw

Movant(s):

William Mark Eddington

Represented By

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Summer M Shaw
Summer M Shaw

Plaintiff(s):

BOSNIAN WAND AIRLINES

Represented By
John T Van Geffen

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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6:16-17389 William Mark Eddington

Chapter 7

Adv#: 6:17-01002 BOSNIAN WAND AIRLINES v. Eddington

#22.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01002. Complaint by BOSNIAN WAND AIRLINES against William Mark Eddington. (d),(e)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud))

From: 3/8/17, 3/22/17

Also #

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Mark Eddington

Represented By
Jenny L Doling

Defendant(s):

William Mark Eddington

Represented By
Summer M Shaw

Plaintiff(s):

BOSNIAN WAND AIRLINES

Represented By
John T Van Geffen

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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6:16-21223 Kelly Arnold

Chapter 7

Adv#: 6:17-01019 Frealy v. Arnold et al

#23.00 Status Conference RE: Complaint by Todd Frealy against Larry Arnold, Kelly Arnold. (Charge To Estate - \$350.00). Nature of Suit: 14 - Recovery of money/property - other, 11 - Recovery of money/property - 542 turnover of property

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 7/19/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kelly Arnold

Represented By
Todd L Turoci

Defendant(s):

Kelly Arnold

Pro Se

Larry Arnold

Pro Se

Plaintiff(s):

Todd Frealy

Represented By
Carmela Pagay

Trustee(s):

Todd A. Frealy (TR)

Represented By
Carmela Pagay

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2:00 PM

6:14-17350 Dean L. Springer, Sr.

Chapter 7

Adv#: 6:16-01141 Simons v. G7 Investments, LLC et al

#1.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01141. Complaint by Larry D Simons against G7 Investments, LLC, Gary M Annunziata, Jean M. Annunziata, Annunziata Family Trust (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy

From: 9/7/16, 10/19/16, 2/8/17

EH__

Docket 1

Party Information

Debtor(s):

Dean L. Springer Sr. Pro Se

Defendant(s):

Jean M. Annunziata Represented By
Jason D Strabo

Annunziata Family Trust Represented By
Jason D Strabo

G7 Investments, LLC Represented By
Jason D Strabo

Gary M Annunziata Represented By
Jason D Strabo

Joint Debtor(s):

Tami Jo Springer Pro Se

Plaintiff(s):

Larry D Simons Represented By

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Sarah Cate Hays
D Edward Hays

Trustee(s):

Larry D Simons (TR)

Represented By
Richard A Marshack
Sarah Cate Hays
D Edward Hays

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6:14-17350 Dean L. Springer, Sr.

Chapter 7

Adv#: 6:16-01142 Simons v. Desert Gastroenterology Consultants, AMC et al

#2.00 CONT Status Conference RE: [21] Amended Complaint by Sarah Cate Hays on behalf of Larry D Simons against Gary M. Annunziata, Desert Gastroenterology Consultants, AMC 401k Profit Sharing Plan, Desert Gastroenterology Consultants, AMC. (RE: related document(s)1 Adversary case 6:16-ap-01142. Complaint by Larry D Simons against Desert Gastroenterology Consultants, AMC. (Charge To Estate)\$350.00. (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))

From: 9/7/16, 10/19/16, 2/8/17

EH__

Docket 21

Party Information

Debtor(s):

Dean L. Springer Sr.

Pro Se

Defendant(s):

Desert Gastroenterology

Represented By
Jason D Strabo

Gary M. Annunziata

Represented By
Jason D Strabo

Desert Gastroenterology

Represented By
Jason D Strabo

Joint Debtor(s):

Tami Jo Springer

Pro Se

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CONT... Dean L. Springer, Sr.

Chapter 7

Plaintiff(s):

Larry D Simons

Represented By
Sarah Cate Hays
D Edward Hays

Trustee(s):

Larry D Simons (TR)

Represented By
Richard A Marshack
Sarah Cate Hays
D Edward Hays

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6:12-22321 Douglas Lee Kendrick and Jennifer Lyn Kendrick

Chapter 13

#1.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 23631 Coast Live Oak Ln, Murrieta CA

MOVANT: WELLS FARGO BANK

EH__

Docket 63

Tentative Ruling:

4/11/17
Service: Proper
Opposition: Yes

Debtors request a continuance based on a pending application for a loan modification and assert a significant equity cushion. Based on the correspondence attached to the Debtors' Opposition, Wells Fargo indicated that a decision could take up to 30 days (or up to April 21) regarding the Debtors' requested loan modification. Based on the foregoing, the Court is inclined to GRANT the Debtors a short continuance.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Douglas Lee Kendrick

Represented By
Matthew Donahue
John F Brady

Joint Debtor(s):

Jennifer Lyn Kendrick

Represented By
Matthew Donahue
John F Brady

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CONT... Douglas Lee Kendrick and Jennifer Lyn Kendrick

Chapter 13

Movant(s):

WELLS FARGO BANK, NA

Represented By
Megan E Lees
Milton Williams

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

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6:12-23627 Michael L Anderson

Chapter 13

#2.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 25570 Corte Zorita, Murrieta, California 92563

MOVANT: ALL CITY REAL ESTATE INC

From: 3/28/17

EH__

Docket 137

Tentative Ruling:

03/28/2017

Movant did not provide telephonic notice of the hearing to the Debtor. The Judge's instructions on UD matters set on shortened time requires telephonic notice on all parties entitled to notice. LBR 4001(c) in turn requires that Relief from Stay Motions be served on the debtor **and** the debtor's attorney.

The instant case was dismissed on October 20, 2016, arising from a Trustee Motion to Dismiss for delinquency. While the case was dismissed, a foreclosure sale was held and the Movant was the successful bidder at the sale. Movant subsequently served a Notice to Quit and filed a Complaint for Unlawful Detainer. On March 1, 2017, the Court entered an order vacating the dismissal. (Docket No. 134). At the hearing on the Motion to Vacate Dismissal, held on January 12, 2017, the Court was not apprised of the fact that the foreclosure sale had occurred or that an unlawful detainer proceeding had been commenced against the Debtor. Instead, relying on the Trustee's withdrawal of their objection to the Motion to Vacate coupled with the Trustee's indication that if the Debtor did not cure within 30 days the Trustee would seek reconversion to a chapter 7, the Court vacated the dismissal.

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CONT... Michael L Anderson

Chapter 13

Movant has provided authorities in support of its contention that the stay is not automatically reimposed by reinstatement of a dismissed case. Movant's citation to *In re Thomas* is persuasive on this point. 194 B.R. 641 (Bankr. D Ariz. 1995). Absent contrary authority, the Court is inclined to GRANT the Motion in its entirety.

Debtor has not come forward with legal authority to counter the arguments made by Movant. However, as noted above, the Debtor was not provided the full notice required pursuant to this Court's instructions for hearings on shortened notice. Based on the foregoing, the Court is inclined to CONTINUE the hearing on the Motion to April 11, 2017, at 10:00 a.m. for Movant to provide telephonic notice of the hearing to Debtor.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Michael L Anderson

Represented By
Javier H Castillo

Movant(s):

All City Real Estate Inc.

Represented By
Julian K Bach

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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6:12-29544 Harry Ervin and Irma Lorena Ervin

Chapter 13

#3.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 563 Calumet Avenue, Beaumont, CA 92223

MOVANT: SETERUS INC

EH__

Docket 75

Tentative Ruling:

04/11/17

Service: Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
GRANT as to ¶¶ 3 and 12 of the prayer for relief.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Harry Ervin

Represented By
Matthew D Resnik

Joint Debtor(s):

Irma Lorena Ervin

Represented By
Matthew D Resnik

Movant(s):

Seterus, Inc. as the authorized

Represented By
Kristin A Zilberstein

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CONT... Harry Ervin and Irma Lorena Ervin

Chapter 13

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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6:12-33802 Terry Lee Ammons and Maurita Atuel Ammons

Chapter 13

#4.00 Notice of Motion and Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 37180 Moon Beam Court, Murrieta, CA 92563

MOVANT: PNC BANK NATIONAL ASSOCIATION

EH__

Docket 79

Tentative Ruling:

04/11/2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
GRANT as to ¶3 of the prayer for relief. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Terry Lee Ammons

Represented By
Steven J Diamond

Joint Debtor(s):

Maurita Atuel Ammons

Represented By
Steven J Diamond

Movant(s):

PNC Bank, National Association

Represented By
Joely Khanh Linh Bui
Daniel K Fujimoto

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**CONT... Terry Lee Ammons and Maurita Atuel Ammons
Caren J Castle**

Chapter 13

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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6:13-26277 Charles Frederick Biehl

Chapter 7

#5.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 3338 Tempe Dr Huntington Beach, CA 92649

MOVANT: BAYVIEW LOAN SERVICING LLC AS SERVICING AGENT FOR
M&T BANK

From: 1/24/17

EH__

Docket 162

***** VACATED *** REASON: CONTINUED TO 4/25/17 AT 10:00 AM**

Tentative Ruling:

Tentative Ruling:

Service is Proper
Opposition: Yes

Given the amount of equity as well as the Trustee's pending adversary related to the property, the Court is inclined to CONTINUE the hearing on the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Charles Frederick Biehl

Represented By
Daryl L Binkley - INACTIVE -
Steven L Bryson

Movant(s):

Bayview Loan Servicing, LLC as

Represented By
Kristin A Zilberstein

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CONT... Charles Frederick Biehl

Chapter 7

Trustee(s):

John P Pringle (TR)

Represented By
James C Bastian Jr
Elyza P Eshaghi
Brandon J Iskander

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6:14-15629 Rocio Castillo

Chapter 13

#6.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 26758 Silver Oak Dr, Murrieta, CA .

MOVANT: US BANK NATIONAL ASSOCIATION

EH__

Docket 56

Tentative Ruling:

04/11/2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
GRANT as to ¶¶3 and 12 of the prayer for relief. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Rocio Castillo

Represented By
James Geoffrey Beirne

Movant(s):

U.S. Bank National Association, as

Represented By
Angie M Marth

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:14-23388 Jose N Recinos and Patricia Recinos

Chapter 13

#7.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2400 Reindeer Lane, Ontario, CA 91761

MOVANT: BOSCO CREDIT, LLC

From: 3/7/17

EH__

Docket 203

***** VACATED *** REASON: ORDER ENTERED 3/22/17**

Tentative Ruling:

03/07/17

Service: Proper

Opposition: Yes

Movant has established cause for relief from stay. Debtors have filed a response indicating that they intend to tender \$1,000 of the arrears by the hearing and request a 6-month APO to cure the balance of the arrears.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jose N Recinos

Represented By
Michael Smith

Joint Debtor(s):

Patricia Recinos

Represented By
Michael Smith

Movant(s):

Bosco Credit, LLC, its successor

Represented By

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CONT... Jose N Recinos and Patricia Recinos

Chapter 13

Nichole Glowin

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:14-24083 Frederick Arnett Mikel

Chapter 13

#8.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 16290 Avenida De Loring, Moreno Valley, CA 92551

MOVANT: U.S. BANK NATIONAL ASSOCIATION

EH__

Docket 103

Tentative Ruling:

04/11/17
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). Request under § 362(d)(2) is DENIED for failure by Movant to establish that the Property has no equity or that it is not necessary for reorganization. GRANT waiver of 4001(a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Frederick Arnett Mikel

Represented By
Todd L Turoci

Movant(s):

U.S. BANK NATIONAL

Represented By
April Harriott
Sean C Ferry
Matthew R. Clark

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CONT... Frederick Arnett Mikel

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:15-10488 Jose L Rangel and Rosa M Rangel

Chapter 13

#9.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 16620 Manzanita Court, Fontana, California 92335

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 75

Tentative Ruling:

04/11/2017
Service: Proper
Opposition: Yes

The Debtors request a continuance to permit the Movant to consider their application for a loan modification. The Court finds the Debtors' 15.6% estimate of equity cushion is insufficient under *Mellor* to adequately protect Movant, and Debtors have not established their loan modification is complete. The Court is inclined to GRANT relief from stay under section 362(d)(1).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jose L Rangel

Represented By
Lisa H Robinson
John F Brady

Joint Debtor(s):

Rosa M Rangel

Represented By
Lisa H Robinson
John F Brady

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CONT... Jose L Rangel and Rosa M Rangel

Chapter 13

Movant(s):

WELLS FARGO BANK, NA

Represented By
Corey Phuse
Carletta D Burney
Megan E Lees
John Chandler

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

6:15-11540 Jesus Manuel Gomez and Maria Gomez

Chapter 13

#10.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 1443 S Idyllwild Ave, Bloomington, CA 92316

MOVANT: WELLS FARGO

EH__

Docket 56

Tentative Ruling:

04/11/17

Service: Proper

Opposition: Yes

Debtors have indicated that they intend to cure by the hearing or request an APO.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jesus Manuel Gomez

Represented By
Dana Travis

Joint Debtor(s):

Maria Gomez

Represented By
Dana Travis

Movant(s):

WELLS FARGO BANK, N. A.

Represented By
Dane W Exnowski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

6:15-13535 Gilbert Alfred Torrez, Sr. and Emily Torrez

Chapter 13

#11.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 790 Walnut Cove, Colton, CA 92324

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 38

Tentative Ruling:

04/11/2017
Service: Proper
Opposition: Yes

Debtors assert they will cure post-petition arrears by the hearing or request an APO.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Gilbert Alfred Torrez Sr.

Represented By
Rabin J Pournazarian

Joint Debtor(s):

Emily Torrez

Represented By
Rabin J Pournazarian

Movant(s):

Wells Fargo Bank, N.A./Wells Fargo

Represented By
Judith Trigg-Hart
Erin Holliday
Christopher Darden
Angela M Fowler
Megan E Lees

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

CONT... Gilbert Alfred Torrez, Sr. and Emily Torrez

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

6:15-17060 Chris Alvarado Espinoza

Chapter 13

#12.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 5720 Polaris Court, Mira Loma Area, CA 91752

MOVANT: NATIONSTAR MORTGAGE LLC

EH__

Docket 44

Tentative Ruling:

04/11/2017
Service: Proper
Opposition: None

GRANT relief from the stay under §362(d)(1). GRANT waiver of 4001(a)(3) stay.
GRANT as to ¶¶ 3 and 12. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Chris Alvarado Espinoza

Represented By
Gary S Saunders

Movant(s):

Nationstar Mortgage LLC

Represented By
Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

6:15-19998 Jack C Pryor

Chapter 7

#13.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Unimproved Real Property, Carmen Meadows, Cabazon CA

MOVANT: MCCRANN TRUST

EH__

Docket 249

Tentative Ruling:

4/11/2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1) and (d)(4) based on multiple bankruptcy cases affecting the Property. GRANT waiver of 4001(a)(3) stay. GRANTED as to requested relief under ¶ 8, except that such order shall be effective only upon recording; and DENIED as to ¶¶ 10, 11 and 13 of the prayer for relief for lack of cause shown.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jack C Pryor

Represented By
Stephen R Wade

Movant(s):

McCrahn Trust, Miller Trust, Olson

Represented By
John A Boyd

Trustee(s):

Karl T Anderson (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

CONT... Jack C Pryor

Leonard M Shulman
Melissa Davis Lowe

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

6:16-10597 Natasha M Kiehl

Chapter 13

#14.00 CONT Motion For Contempt and Sanctions Against Wells Fargo Bank for the Willful Contempt of Stay, When it Sold Debtors Home in Violation of the Stay

From: 11/1/16, 12/13/16, 2/14/17

EH__

Docket 19

***** VACATED *** REASON: CONTINUED TO 5/9/17 @ 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Natasha M Kiehl

Represented By
Bill J Parks

Movant(s):

Natasha M Kiehl

Represented By
Bill J Parks

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

6:16-16263 Tanyua A Gates-Holmes

Chapter 13

#15.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 23631 Rhea Drive, Moreno Valley, CA 92557

MOVANT: NATIONSTAR MORTGAGE LLC

EH__

Docket 26

Tentative Ruling:

04/11/17
Service: Proper
Opposition: Yes

Debtor asserts that Movant is adequately protected by the 8.5% estimate of adequate protection. The Court finds this equity cushion insufficient under *Mellor*. Further, Debtor has also provided evidence that a wire transfer of \$3,435.06 has been made to Movant. However, this amount is less than the total amount owed in arrears.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Tanyua A Gates-Holmes

Represented By
John F Brady

Movant(s):

Nationstar Mortgage LLC as

Represented By
Kristin A Zilberstein

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

6:16-17342 Natasha Marie Kiehl and Phillip Nathan Kiehl

Chapter 13

#16.00 CONT Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Mobile Home on 2.5 acres

HOLDING DATE

MOVANT: NATASHA MARIE KIEHL AND PHILLIP NATHAN KIEHL

From: 11/1/16, 12/13/16, 2/14/17

Also #17

EH__

Docket 21

***** VACATED *** REASON: CONTINUED TO 5/9/17 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Natasha Marie Kiehl

Represented By
Bill J Parks

Joint Debtor(s):

Phillip Nathan Kiehl

Represented By
Bill J Parks

Movant(s):

Phillip Nathan Kiehl

Represented By
Bill J Parks

Natasha Marie Kiehl

Represented By
Bill J Parks

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

CONT... Natasha Marie Kiehl and Phillip Nathan Kiehl

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

6:16-17342 Natasha Marie Kiehl and Phillip Nathan Kiehl

Chapter 13

#17.00 CONT Motion for relief from the automatic stay with supporting declarations
UNLAWFUL DETAINER RE: 10822 Manada Rd Phelan CA 92371
HOLDING DATE

MOVANT: NICOLE TRACY C WANG

From: 11/1/16, 12/13/16, 2/14/17

Also #16

EH__

Docket 17

***** VACATED *** REASON: CONTINUED TO 5/9/17 AT 10:00 AM**

Tentative Ruling:

8/30/16

Service is Improper

Opposition: Due at the hearing.

Service is improper because Movant did not serve the Debtors, in addition to Debtors' counsel, with the Notice and Motion as required by LBR 4001-1(c). Additionally, Movant has not provided any evidence that she provided telephonic notice of the hearing to all parties entitled to receive notice, as set forth in the Judge's self calendar instructions.

The Court also notes that Movant sets forth a basis for relief under § 362(d)(1) on page 3 of the Motion, but failed to request such relief on page 5 of the Motion. Thus, unless an amended motion is filed and served addressing such discrepancy, the Court would be inclined to deny any relief sought under § 362(d)(1).

Finally, it appears the underlying foreclosure sale may be void as occurring during the prior case filed by Natasha Kiehl.

APPEARANCES REQUIRED.

Party Information

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

CONT... Natasha Marie Kiehl and Phillip Nathan Kiehl

Chapter 13

Debtor(s):

Natasha Marie Kiehl

Represented By
Bill J Parks

Joint Debtor(s):

Phillip Nathan Kiehl

Represented By
Bill J Parks

Movant(s):

Nicole Wang

Represented By
Chi L Ip
Gerald N Sims

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

6:16-20342 Ana I Murguia Owens

Chapter 13

#18.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2008 Ford Escape, VIN 1FMCU49H88KB01574

MOVANT: FIRST INVESTORS FINANCIAL SERVICES

EH__

Docket 21

Tentative Ruling:

04/11/2017
Service is Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Ana I Murguia Owens

Represented By
Brian J Soo-Hoo

Movant(s):

First Investors Financial Services

Represented By
Sheryl K Ith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

6:16-20788 DORIS A HARRIS

Chapter 7

#19.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 14270 Point Reyes St, Fontana, CA 92336

MOVANT: NATIONSTAR MORTGAGE LLC

EH__

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

DORIS A HARRIS

Represented By
Mark D Edelbrock

Movant(s):

Nationstar Mortgage LLC

Represented By
Kristin A Zilberstein

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

6:17-10730 John D. Smith and Jennifer R. Smith

Chapter 7

#20.00 Notice of Motion and Motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 5035 Cherrywood Drive, Oceanside, CA 92056 .

MOVANT: CHRISTINANATRUST

EH__

Docket 12

Tentative Ruling:

4/11/17
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay. GRANT as to ¶7b.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

John D. Smith

Represented By
Todd L Turoci

Joint Debtor(s):

Jennifer R. Smith

Represented By
Todd L Turoci

Movant(s):

Christiana Trust, a division of

Represented By
Erin M McCartney

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

CONT... John D. Smith and Jennifer R. Smith

Chapter 7

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

6:17-11028 James W Schwartz and Holly L Bryson

Chapter 13

#21.00 CONT Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2014 Hyundai GLS

MOVANT: XCEED FINANCIAL CREDIT UNION

From: 3/28/17

EH__

Docket 22

Tentative Ruling:

3/28/17

Service is Proper

Opposition: Yes

Debtor asserts that he is treating the Movant's claim in full through his chapter 13 plan. The Plan was confirmed on March 23, 2017, although the order confirming plan has not yet been entered. Here, the plan does not provide for pre-confirmation adequate protection, and there is no evidence Debtor is not making plan payments.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

James W Schwartz

Represented By
Michael Smith

Joint Debtor(s):

Holly L Bryson

Represented By
Michael Smith

Movant(s):

Xceed Financial Credit Union

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

CONT... James W Schwartz and Holly L Bryson

Chapter 13

Karel G Rocha

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

6:17-11284 Elizabeth Hernandez

Chapter 7

#22.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Kia Optima

MOVANT: HYUNDAI LEASE TITLING TRUST

EH__

Docket 8

Tentative Ruling:

04/11/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Elizabeth Hernandez

Represented By
Luis G Torres

Movant(s):

Hyundai Lease Titling Trust

Represented By
Austin P Nagel

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

6:17-11406 Eric D Humildad and Jennifer R Humildad

Chapter 7

#23.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 KIA SORENTO

MOVANT: TD AUTO FINANCE LLC

EH__

Docket 12

Tentative Ruling:

04/11/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Eric D Humildad Pro Se

Joint Debtor(s):

Jennifer R Humildad Pro Se

Movant(s):

TD Auto Finance LLC Represented By
Sheryl K Ith

Trustee(s):

Karl T Anderson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

10:00 AM

6:17-12137 Dianne F. Simmons

Chapter 13

#24.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Re: 31274 Janelle Lane, Winchester, CA 92596 and Toyota Prius

MOVANT: DIANNE SIMMONS

EH__

Docket 12

Tentative Ruling:

04/11/2017

Notice was proper and no opposition has been filed.

The comments of the Chapter 13 Trustee at the Debtor's confirmation hearing in the prior case appear to corroborate the Debtor's assertion that the prior dismissal was due to failures of prior counsel to correct errors in the filings. The Debtor, having obtained new counsel, the Court finds that the instant filing is in good faith. The stay shall be continued as to all creditors.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Dianne F. Simmons

Represented By
Michael Smith

Movant(s):

Dianne F. Simmons

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

2:00 PM

6:17-10724 Bausman and Company Incorporated

Chapter 11

#25.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 2/28/17

EH__

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bausman and Company Incorporated

Represented By
William A Smelko

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 11, 2017

Hearing Room 303

2:00 PM

6:17-10724 Bausman and Company Incorporated

Chapter 11

#26.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 8687 Melrose Ave., #B-396, West Hollywood, CA 90069

MOVANT: PACIFIC DESIGN CENTER

EH__

Docket 47

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bausman and Company Incorporated

Represented By
William A Smelko

Movant(s):

Pacific Design Center I, LLC

Represented By
Carol G Unruh

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, April 12, 2017

Hearing Room 303

11:00 AM

6:09-14033 Matthew Graham Mighell and Diana Marie Mighell

Chapter 7

#1.00 CONT Status Hearing re Memorandum Decision and Order (1) Holding Daniel G. Brown in Contempt; (2) Establishing Briefing Schedule; and (3) Setting Hearing re damages

From: 3/22/17, 3/29/17

EH__

Docket 213

***** VACATED *** REASON: ORDER ENTERED 4/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Matthew Graham Mighell

Represented By
Daniel G Brown
Richard A Brownstein
Christopher Hewitt

Joint Debtor(s):

Diana Marie Mighell

Represented By
Daniel G Brown
Richard A Brownstein
Christopher Hewitt

Trustee(s):

Helen R. Frazer (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, April 12, 2017

Hearing Room 303

11:00 AM

6:13-22710 Jesus M. Tapia

Chapter 7

Adv#: 6:16-01265 Whitmore (TR) v. Davol, Inc. et al

#2.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01265. Complaint by Jesus Tapia against Davol, Inc., Bard Devices, Inc., C.R. Bard, Inc..
(Holding date)

From: 1/4/17, 2/1/17, 3/1/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus M. Tapia

Represented By
Michael Smith

Defendant(s):

C.R. Bard, Inc.

Represented By
Christopher O Rivas

Bard Devices, Inc.

Represented By
Christopher O Rivas

Davol, Inc.

Represented By
Christopher O Rivas

Plaintiff(s):

Robert Whitmore (TR)

Represented By
Troy A Brenes

Trustee(s):

Robert Whitmore (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, April 12, 2017

Hearing Room 303

11:00 AM

CONT...

Jesus M. Tapia

Douglas A Plazak
Troy A Brenes

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, April 12, 2017

Hearing Room 303

11:00 AM

6:15-14230 Home Security Stores, Inc.

Chapter 7

#3.00 Motion for Order Compelling Turnover of Recorded Information Relating to the Debtor's Assets and Financial Affairs Pursuant to 11 U.S.C. § 542(e); Memo of Ps and As; Decl of Charity J. Miller

ALSO #4

EH__

Docket 78

Tentative Ruling:

4/12/17

BACKGROUND

On April 28, 2015, Home Security Stores, Inc. ("Debtor") filed a Chapter 7 voluntary petition. On May 28, 2015, the Court authorized the employment of Goe & Forsythe, LLP as general counsel to Trustee. On July 2, 2015, the Court authorized the employment of Hahn Fife & Co. LLP as accountants to Trustee.

At the initial meeting of creditors, Debtor's principals appeared on behalf of Debtor, along with Debtor's former counsel, Harry Histen ("Histen"). During the hearing, Histen admitted that he probably had possession of corporate records of Debtor. Trustee has repeatedly requested those documents and Histen has failed to respond. On January 26, 2016, the Court granted Trustee's motion for a 2004 examination of Histen. Afterwards, Histen was served with a subpoena requiring the production of documents and his attendance at an oral examination. The subpoena was ignored. The Trustee believes that Histen has recorded information related to the Debtor's assets and financial affairs. Trustee's requests "an order compelling Histen to turn over all recorded information regarding the Debtor's property, operations, and financial affairs pursuant to 11 U.S.C. § 542(e)."

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, April 12, 2017

Hearing Room 303

11:00 AM

CONT... Home Security Stores, Inc.

Chapter 7

DISCUSSION

11 U.S.C. § 542(e) states:

(e) Subject to any applicable privilege, after notice and a hearing, the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee.

"[T]he bankruptcy court may order turnover of the information when the information is necessary to the administration of the estate." *Matter of Matassini*, 90 B.R. 508, 509 (Bankr. M.D. Fla. 1988). Here, Trustee has indicated that the information is relevant to Trustee's investigation of undisclosed assets, establishing cause for granting the motion. Moreover, the Court deems Histen's failure to oppose as consent to the requested relief, pursuant to Local Rule 9013-1(h).

TENTATIVE RULING

The Court is inclined to GRANT the motion.

APPEARANCES REQUIRED. Movant to address deadline for turnover.

Party Information

Debtor(s):

Home Security Stores, Inc.

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, April 12, 2017

Hearing Room 303

11:00 AM

CONT... Home Security Stores, Inc.

Chapter 7

Winfield S Payne III

Movant(s):

John P Pringle (TR)

Represented By
Robert P Goe
Charity J Miller

Trustee(s):

John P Pringle (TR)

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, April 12, 2017

Hearing Room 303

11:00 AM

6:15-14230 Home Security Stores, Inc.

Chapter 7

#4.00 Motion for Order Extending Time to File Avoidance Actions Under 11 U.S.C. § 546; Memo of P's and A's and Decl of Charity J. Miller in Support

ALSO #3

EH__

Docket 80

Tentative Ruling:

4/12/17

BACKGROUND

On April 28, 2015, Home Security Stores, Inc. ("Debtor") filed a Chapter 7 voluntary petition. On May 28, 2015, the Court authorized the employment of Goe & Forsythe, LLP as general counsel to Trustee. On July 2, 2015, the Court authorized the employment of Hahn Fife & Co. LLP as accountants for Trustee. On July 17, 2015, the Court authorized the employment of Credit Management Association as auctioneer for Trustee.

At the initial meeting of creditors, the Trustee learned that Debtor's two shareholders, Ralph and Stacy Winn (the "Winns"), had physically removed Debtor's servers and some computers, on which Debtor's financials were recorded. Trustee asserts that Debtor engaged in transfers to insiders after the cessation of its operations. After recovering the servers, Trustee learned that the information had been removed. Debtor's physical paper records are not useful. Trustee has requested corporate records from Debtor, and Debtor's various attorneys, but has received very few documents. Trustee obtained an order authorizing a 2004 examination of Debtor's non-bankruptcy attorney, Harry Histen ("Histen"). Histen failed to respond to the subpoena. Trustee states that the records he currently possesses do not provide

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, April 12, 2017

Hearing Room 303

11:00 AM

CONT... Home Security Stores, Inc.

Chapter 7

sufficient information to enable him to properly analyze Debtor's financials.

DISCUSSION

11 U.S.C. § 546 requires that an avoidance action be brought within two years of the entry of the order for relief. That deadline, however, can be extended. *See, e.g., In re United Ins. Mgmt., Inc.*, 14 F.3d 1380, 1384 (9th Cir. 1994). The current deadline in this case is April 28, 2017, which Trustee seeks to extend for six months to and including October 28, 2017.

Fed. R. Bankr. P. Rule 9006(b) states:

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

The Court adopts a "for cause" standard when determining whether to utilize Fed. R. Bankr. P. Rule 9006(b) to extend a deadline. *See In re Fundamental Long Term Care, Inc.*, 501 B.R. 784, 789 (Bankr. M.D. Fla. 2013). In this case, Trustee's motion indicates that Histén and Debtor have been uncooperative with, and possibly obstructive of, Trustee's attempt to investigate Debtor's financial affairs. Moreover, the Court deems lack of opposition as consent to the relief requested pursuant to Local Rule 9013-(1)(h).

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Wednesday, April 12, 2017

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11:00 AM

CONT... Home Security Stores, Inc.

Chapter 7

TENTATIVE RULING

For the foregoing reasons, the Court is inclined to GRANT the motion.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Home Security Stores, Inc.

Represented By
Winfield S Payne III

Movant(s):

John P Pringle (TR)

Represented By
Robert P Goe
Charity J Miller

Trustee(s):

John P Pringle (TR)

Represented By
Robert P Goe
Charity J Miller

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Wednesday, April 12, 2017

Hearing Room 303

11:00 AM

6:15-20280 Kai Lin Wu

Chapter 7

#5.00 Motion to Allow Claim Number 1 of County of San Bernardino as Fully Secured, Not Entitled to a Dividend; Memo of Ps and As; Declaration of John P Pringle

EH__

Docket 53

Tentative Ruling:

4/12/17

Background:

On October 21, 2015, Kai Wu filed a Chapter 7 voluntary petition. On February 26, 2016, the County of San Bernardino filed a secured claim in the amount of \$4,664.60 ("Claim #1). On March 6, 2017, Trustee filed a motion to allow Claim #1 as fully secured, not entitled to a dividend.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *See Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000).

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CONT... Kai Lin Wu

Chapter 7

Analysis:

Pursuant to § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Here the proof of claim does not indicate the value of the underlying collateral, so as to establish whether the claim is fully secured, and upon objection the burden shifts to the claimant. Moreover, the claimant has failed to oppose, which the Court deems consent to the requested relief pursuant to Local Rule 9013-(1)(h).

Tentative Ruling

The Court is inclined to SUSTAIN the objection in its entirety.

APPEARANCES WAIVED. Movant to lodge within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Kai Lin Wu

Represented By
Paul Y Lee

Movant(s):

John P Pringle (TR)

Represented By
Wesley H Avery

Trustee(s):

John P Pringle (TR)

Represented By
Wesley H Avery

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Wednesday, April 12, 2017

Hearing Room 303

11:00 AM

6:16-18842 Roderick E Clignett

Chapter 7

#6.00 CONT Motion for an Order Pursuant to 11 U.S.C. §303(i) for damages, punitive damages costs and Attorneys fees

From: 3/29/17

EH__

Docket 24

Tentative Ruling:

04/12/17

BACKGROUND

On October 3, 2016, Victor Salinas ("Petitioning Creditor") filed an involuntary Chapter 7 petition against Roderick Clignett ("Debtor"). On November 2, 2016, Debtor filed a motion to dismiss. On November 23, 2016, Petitioning Creditor filed his opposition and, five days later, attempted to amend the petition by filing an addendum. At a hearing on December 7, 2016, the Court continued the matter for further briefing.

After further briefing, the Court dismissed the involuntary petition and retained jurisdiction to adjudicate a motion for fees and costs pursuant to 11 U.S.C. § 303(i). Debtor filed his § 303(i) motion on March 2, 2017. On March 24, 2017, Petitioning Creditor filed a motion to continue the hearing for thirty days. In support of his motion, he stated that he had fired his previous attorney, Stephen Wade, and had not received notice of the motion until March 17, 2017. On March 27, 2017, the Court continued the hearing for two weeks, to April 12, 2017. Petitioning Creditor filed his opposition on April 5, 2017. On April 10, 2017, Debtor filed a reply and evidentiary objections.

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CONT... Roderick E Clignett

Chapter 7

DISCUSSION

I. Legal Standard

11 U.S.C. § 303(i) states:

(i) If the court dismissed a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment –

(1) against the petitioners and in favor of the debtor for –

(A) costs; or

(B) a reasonable attorney's fee; or

(2) against any petitioner that filed the petition in bad faith, for –

(A) any damages proximately caused by such filing; or

(B) punitive damages

The Ninth Circuit has determined that a totality of the circumstances test applies when confronted with a motion for damages pursuant to § 303(i):

Although the totality of the circumstances test can be somewhat amorphous, the bankruptcy court, where relevant, should consider the following factors before awarding attorney's fees and costs under § 303(i): (1) the merits of the involuntary petition, (2) the role of any improper conduct on the part of the alleged debtor, (3) the reasonableness of the actions taken by the petitioning creditors, and (4) the motivation and objectives behind filing the petition.

Higgins v. Vortex Fishing Sys., Inc., 379 F.3d 701, 707 (9th Cir. 2004) (quotations omitted) (stating also that "[a]lthough definitive in most cases, this list is not exhaustive, and a bankruptcy court may, in its discretion, choose to consider other material factors it deems relevant."). It is "the petitioning creditors' burden to establish, under the totality of the circumstances, that factors exist which overcome the presumption that Debtor should receive fees and costs." *In re C & C Jewelry Mfg., Inc.*, 373 Fed. Appx. 775 (9th Cir. 2010); see also *Sofris v. Maple-Whitworth, Inc.*, 556

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CONT... **Roderick E Clignett**

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F.3d 642 (9th Cir. 2009) (upon dismissal of involuntary petition, presumption arises in favor of debtor for fees and costs; burden is on petitioning creditor(s) to rebut based on totality of the circumstances); *In re Medpoint Mgmt., LLC*, 2016 WL 3251581 at *6 (B.A.P. 9th Cir. 2016) ("The *Higgins* court held that its adoption of the totality of circumstances test did not abrogate the presumption that, upon dismissal, the petitioning creditors should be held liable for the fees the alleged debtor incurred in defending against the involuntary petition."); *In re Macke Int'l Trade, Inc.*, 370 B.R. 236, 249 (B.A.P. 9th Cir. 2007) ("[A]lthough the Code has liberalized standards for instituting involuntary cases, because of the potential adverse impact on the debtor and the need to encourage discretion in filing such cases, unsuccessful involuntary petitioners should routinely expect to pay the debtor's legal expenses arising from the involuntary filing.").

II. Compensatory Damages

As described above, there is a presumption that Petitioning Creditor is liable for compensatory damages. Petitioning Creditor is entitled to an opportunity to rebut the presumption, and has filed an opposition. Therefore, the Court will apply the totality of circumstances test delineated in *Higgins*.

Regarding the merits of the involuntary petition, Petitioning Creditor essentially alleges that the petition was dismissed because of a technical mistake – but that the petition itself had merit. The Court notes that its decision discussed an alternative, albeit premature basis for dismissal, 11 U.S.C. § 303(b) and Fed. R. Bankr. P. Rule 1003(b), that may have produced additional litigation had the technical mistake not occurred. See *In re Clignett*, 2017 WL 548975 at *3-4 (Bankr. C.D. Cal. 2017). Nevertheless, because the petition was dismissed at an early stage, the Court is unable to ascertain whether the involuntary petition was meritorious, and this factor does not clearly weigh in favor of either party.

Regarding the second factor, improper conduct on the part of the alleged debtor, Petitioning Creditor states that a state court judgment was entered against Debtor for fraud.¹ Petitioning Creditor also indicates that there may have been an attempt to hide assets by Debtor, although the extent of that attempt and its result are not elaborated. The bad faith at issue, however, was the subject of the state court action, which the Court views as sufficiently attenuated from the involuntary petition, and, therefore, this factor weighs in favor of an award of fees.

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Regarding the third and fourth factors, the reasonableness of the actions taken by petitioning creditor, and the motives and objectives behind filing the petition, Petitioning Creditor states that Debtor had failed to make payments toward the judgment for an extended period of time. This does not support a finding of reasonableness. "Filing an involuntary petition should be a measure of last resort." *Higgins*, 379 F.3d 701, 707. Here, at the time of the filing of the involuntary petition, the parties were engaged in state court proceedings, and had a scheduled settlement conference in the near future. Filing an involuntary petition in the midst of state court litigation concerning the debt is objectively unreasonable. Furthermore, the fact that the involuntary petition was filed by Petitioning Creditor, while the state court litigation was being maintained by his father-in-law, casts doubt on the objectives and motives of the filing.²

Involuntary petitions are not an appropriate mechanism to resolve two-party disputes that are the subject of pending state court litigation. Here, Petitioning Creditor filed a technically flawed involuntary petition shortly before settlement discussions were to commence. Additionally, the fact that Petitioning Creditor, instead of the state court plaintiff, his father-in-law, filed the involuntary petition, may have been a tactic to avoid a realization by the bankruptcy court that his father-in-law failed to schedule the judgment during his own bankruptcy. All of these issues are problematic. While there is some evidence of improper conduct by Debtor, the totality of the circumstances weighs in favor of awarding fees.

Debtor has requested \$49,531.91 in attorney's fees. Of those fees, \$7,455 are attributable to work done by Dilip Vithlani ("Vithlani"), Debtor's counsel for state court proceedings involving the claim which led to the filing of the involuntary bankruptcy petition. While the standards for determining attorney's fees under § 303 (i) are not clearly delineated, within the Ninth Circuit, one court has stated the following:

Unlike fee awards under 11 U.S.C. § 330, the statute, rules, and case law interpreting § 303 have not delineated clear standards for finding whether a particular fee is justified. At a minimum, however, compensation should be

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reasonable. Any award should also be based on detailed accounts of services rendered. Although the type of fee application used for § 330 awards is not requisite, the records submitted in a § 303(i) setting should clearly identify the nature of work performed, its relevance to the defense to the involuntary petition, and the time expended.

In re Wavelength, Inc., 61 B.R. 614, 621 (B.A.P. 9th Cir. 1986). Of particular significance in the above quote is the requirement that the work be relevant to a defense to the involuntary petition. Petitioning Creditor appears to argue that the work must be related to the motion to dismiss, defense of an involuntary petition can include matter outside the motion to dismiss. The majority of the fees relating to services provided by Vithlani, however, are not relevant to the defense to the involuntary petition. Therefore, only the following entries of Vithlani will be allowed:

- (1) 10/17/16 T/c (x3) with Client and R Aronson to discuss strategy on the petition (\$280)
- (2) 10/28/16 T/c with R Aronson to go over factual background and provide documentary support for motion to dismiss (\$385)
- (3) 11/1/16 Review motion to dismiss for facts; provide edits and comments; revise declaration and fax signature to R Aronson (\$315)
- (4) 12/27/16 Review 303(i) motion; revise declaration and prepare billing records related to the petition (\$385)
- (5) 2/10.2017 Review section 303(i) motion and declaration; revise billing statement and present it to bankruptcy counsel (\$175)

Therefore, with respect to Vithlani's fees, the Court will award a reduced amount of \$1,540.

Debtor requests an additional \$42,071.91 related to work done by Robert Aronson ("Aronson"), \$1875 of which constitute anticipatory fees for work done between March 3 and March 22. According to Aronson's declaration, his invoices submitted total \$40,201.91. There appears to be a substantial arithmetical error. The invoices

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submitted, which cover the entirety of the relevant dates, total \$22,646.47. While Petitioning Creditor generally challenges the requested fees as excessive and unreasonable, Petitioning Creditor declines to present specific examples or evidence. The Court has reviewed time entries and finds them to be reasonable and properly documented. Therefore, the Court will award attorney's fees in favor of Debtor and against Petitioning Creditor in the reduced amount of \$24,521.47.

III. Punitive Damages

Debtor finally requests \$7,500 in punitive damages. A prerequisite to an award of punitive damages under § 303(i) is a bad faith finding by the Court. "The Bankruptcy Court does not define 'bad faith' for purposes of awarding punitive damages under § 303(i)." *In re Wavelength, Inc.*, 61 B.R. 614, 619 (B.A.P. 9th Cir. 1986). Bad faith is recognized when a petition is "ill advised or motivated by spite, malice or a desire to embarrass the debtor." *Id.* Here, Petitioning Creditor filed an inaccurate voluntary petition based on a claim that his father in law was pursuing in state court. As was the case in *Wavelength*, the filing of a deficient Chapter 11 involuntary petition, coupled with the existence of a state court proceeding is an indication of possible bad faith. The timing of the involuntary petition, shortly before a mandatory settlement conference was to occur, supports the inference that Petitioning Creditor intended to use the legally deficient involuntary petition as negotiating leverage. The actions of Petitioning Creditor were, at the very least, ill-advised. Nonetheless, the Court does not find the actions at issue rise to the level that support a punitive damage award.

IV. Payment of Fees as Condition

Debtor requests that the Court order that the payment of the assessed fees be a condition "to any re-filing of an involuntary petition." The Court declines to impose such a condition. First of all, Debtor has not briefed the propriety of such a sanction. Additionally, the Court notes that the conduct of Petitioning Creditor does not appear to rise to the vexation that has caused other courts to impose similar requirements under § 105(a). *See, e.g., In re Magers*, 2003 WL 103400 at *3 (N.D. Cal. 2003). The Court notes that the failure to pay the assessed fees and damages may lead to further

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CONT... **Roderick E Clignett**
sanctions, for which additional fees may be assessed.

Chapter 7

TENTATIVE RULING

The Court is inclined to GRANT the motion and award to Debtor, and against Petitioning Creditor, the reduced amount of \$26,061.47, payable within thirty days of the entry of this order.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Roderick E Clignett

Represented By
Robert M Aronson

Movant(s):

Roderick E Clignett

Represented By
Robert M Aronson
Robert M Aronson
Robert M Aronson

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

Hearing Room 303

2:00 PM

6:13-14986 David Wayne Wakefield

Chapter 7

Adv#: 6:13-01233 Continental East Fund IV, LLC v. Wakefield et al

#7.00 CONT Status Conference re: Adversary case 6:13-ap-01233. Complaint by Continental East Fund IV, LLC against David Wakefield, Elise Wakefield. false pretenses, false representation, actual fraud

From: 9/18/13. 2/12/14, 4/23/14, 8/20/14, 10/1/14, 10/22/14, 1/14/15, 2/18/15, 6/17/15, 8/26/15, 9/2/15, 11/18/15, 5/18/16, 5/25/16, 7/27/16, 1/11/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 5/17/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Wayne Wakefield

Represented By
Jordan Nils Bursch
Robert E Huttenhoff

Defendant(s):

Elise Wakefield

Represented By
Robert E Huttenhoff

David Wakefield

Represented By
Robert E Huttenhoff

Joint Debtor(s):

Elise Wakefield

Represented By
Jordan Nils Bursch
Robert E Huttenhoff

Plaintiff(s):

Continental East Fund IV, LLC

Represented By

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CONT... David Wayne Wakefield

Chapter 7

Kyra E Andrassy
William A Floratos

Trustee(s):

Howard B Grobstein (TR)

Represented By
Alan W Forsley

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Wednesday, April 12, 2017

Hearing Room 303

2:00 PM

6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01199 Revere Financial Corporation v. Bank of Southern California, N.A.

#8.00 CONT Status Conference Re: Complaint by Revere Financial Corporation against Bank of Southern California, NA 12 - Recovery of money/property - 547 preference, 14 - Recovery of money/property - other

From: 10/19/16, 11/9/16, 11/30/16

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 9/13/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Bank of Southern California, N.A.

Represented By
Kathryn M.S. Catherwood

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

**United States Bankruptcy Court
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2:00 PM

6:14-17350 Dean L. Springer, Sr.
Adv#: 6:16-01140 Simons v. Lindgren

Chapter 7

#9.00 Motion for Entry of Default Judgment

ALSO # 10

EH__

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr. Pro Se

Defendant(s):

Charles Lindgren Pro Se

Joint Debtor(s):

Tami Jo Springer Pro Se

Movant(s):

Larry D Simons Represented By
Sarah Cate Hays
D Edward Hays

Plaintiff(s):

Larry D Simons Represented By
Sarah Cate Hays
D Edward Hays

Trustee(s):

Larry D Simons (TR) Represented By

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CONT...

Dean L. Springer, Sr.

Richard A Marshack
Sarah Cate Hays
D Edward Hays

Chapter 7

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6:14-17350 Dean L. Springer, Sr.

Chapter 7

Adv#: 6:16-01140 Simons v. Lindgren

#10.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01140. Complaint by Larry D Simons against Charles Lindgren (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))

From: 9/7/16, 12/7/16, 3/1/17

ALSO # 9

EH __

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr. Pro Se

Defendant(s):

Charles Lindgren Pro Se

Joint Debtor(s):

Tami Jo Springer Pro Se

Plaintiff(s):

Larry D Simons Represented By
Sarah Cate Hays
D Edward Hays

Trustee(s):

Larry D Simons (TR) Represented By

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CONT...

Dean L. Springer, Sr.

Richard A Marshack
Sarah Cate Hays
D Edward Hays

Chapter 7

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Hearing Room 303

2:00 PM

6:15-16301 Audrey Zumwalt

Chapter 7

Adv#: 6:15-01270 Maradiaga, Sr et al v. Zumwalt

#11.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01270. Complaint by Julio Maradiaga Sr, Kathleen Maradiaga against Audrey Zumwalt . false pretenses, false representation, actual fraud) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury))

From: 12/2/15, 3/30/16, 4/6/16, 7/27/16, 11/30/16, 12/7/16

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Audrey Zumwalt

Represented By
Javier H Castillo

Defendant(s):

Audrey Zumwalt

Represented By
Javier H Castillo
Mario Alvarado

Plaintiff(s):

Kathleen Maradiaga

Represented By
Mario Alvarado

Julio Maradiaga Sr

Represented By
Mario Alvarado

Trustee(s):

Robert Whitmore (TR)

Pro Se

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CONT... Audrey Zumwalt

Chapter 7

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6:16-13311 Jose Antonio Hernandez
Adv#: 6:16-01176 Simons v. Navarro

Chapter 7

#12.00 CONT Status Conference RE: Complaint to Avoid and Recover Fraudulent Transfer

From: 9/7/16, 11/9/16, 1/11/17, 3/8/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Antonio Hernandez

Represented By
Jessica De Anda Leon

Defendant(s):

Carolina Villalobos Navarro

Represented By
Christopher J Langley

Plaintiff(s):

Larry D Simons

Represented By
Frank X Ruggier

Trustee(s):

Larry D Simons (TR)

Represented By
Frank X Ruggier

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

Hearing Room 303

2:00 PM

6:16-17901 JIM GREGORY BURGESS

Chapter 7

Adv#: 6:16-01292 Burgess v. United States Department of Education

#13.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01292. Complaint by Jim Gregory Burgess against United States Department of Education . (Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan))

From: 2/8/17

EH__

Docket 1

***** VACATED *** REASON: CASE DISMISSED 3/22/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JIM GREGORY BURGESS

Pro Se

Defendant(s):

United States Department of

Represented By
Elan S Levey

Plaintiff(s):

Jim Gregory Burgess

Pro Se

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
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2:00 PM

6:16-19799 Jaison Vally Surace

Chapter 7

Adv#: 6:17-01025 Pringle v. Surace

#14.00 Status Conference RE: [1] Adversary case 6:17-ap-01025. Complaint by John P. Pringle against Jaison Vally Surace. (Charge To Estate - \$350.00). (Attachments: # 1 Adversary Coversheet) Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e)))

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Defendant(s):

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Plaintiff(s):

John P. Pringle

Represented By
Todd A Frealy
Carmela Pagay

Trustee(s):

John P Pringle (TR)

Represented By
Todd A Frealy
Carmela Pagay

**United States Bankruptcy Court
Central District of California
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Monday, April 24, 2017

Hearing Room 303

2:00 PM

6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:09-01235 DIAMOND v. Empire Partners, Inc., a California Corporation et

**#1.00 CONT Status Conference re complaint
HOLDING DATE**

From: 3/6/13, 6/5/13, 9/11/13, 11/13/13,12/18/13, 2/5/14, 3/12/14, 4/9/14,
4/16/14, 5/21/14, 8/27/14, 8/28/14, 9/10/14, 9/29/14, 11/10/14, 11/19/14,
1/21/15, 1/28/15, 2/19/15, 3/24/15, 5/28/15, 6/23/15, 8/12/15, 9/18/15, 10/6/15,
12/8/15, 1/20/16, 2/18/16, 3/23/16, 4/5/16, 4/13/16, 4/22/16, 6/6/16, 7/25/16,
10/3/16, 11/14/16, 1/23/17, 2/27/17

EH__

Docket 1

Party Information

Debtor(s):

Empire Land, LLC

Represented By
James Stang
Robert M Saunders
Michael I Gottfried
----- O'melveny & Myers
Dean A Ziehl
Jonathan A Loeb
P Sabin Willett
Richard K Diamond (TR)
Jeffrey Rosenfeld

Defendant(s):

DOES 1 through 100, inclusive

Pro Se

Empire Partners, Inc., a California

Represented By
David Loughnot
Jonathan A Loeb
Jeffrey Rosenfeld

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CONT... Empire Land, LLC

Chapter 7

Plaintiff(s):

RICHARD K. DIAMOND

Represented By

Richard S Berger

Michael I Gottfried

Aleksandra Zimonjic

Monica Rieder

John P Reitman

Peter M Bransten

Cynthia M Cohen

Roye Zur

Trustee(s):

Richard K Diamond (TR)

Represented By

Michael I Gottfried

Richard S Berger

Rodger M Landau

Richard K Diamond

Peter M Bransten

Aleksandra Zimonjic

Monica Rieder

Lisa N Nobles

Peter J Gurfein

Paul Hastings

Roye Zur

Amy Evans

Best Best & Krieger

Franklin C Adams

Thomas J Eastmond

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, April 24, 2017

Hearing Room 303

2:00 PM

6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:10-01319 DIAMOND v. Empire Partners, Inc., a California Corporation et

**#2.00 CONT Status Conference re complaint
HOLDING DATE**

From: 3/6/13, 6/5/13, 9/11/13, 11/13/13,12/18/13, 2/5/14, 3/12/14, 4/9/14,
4/16/14, 5/21/14, 8/27/14, 8/28/14, 9/10/14, 9/29/14, 11/10/14, 11/19/14,
01/21/15, 1/28/15, 2/19/15, 3/24/15, 5/28/15, 6/23/15, 8/12/15, 9/18/15, 10/6/15,
12/8/15, 1/20/16, 2/18/16, 3/23/16, 4/5/16, 4/13/16, 4/22/16, 6/6/16, 7/25/16,
10/3/16, 11/14/16, 1/23/17, 2/27/17

EH____

Docket 1

Party Information

Debtor(s):

Empire Land, LLC

Represented By
James Stang
Robert M Saunders
Michael I Gottfried
----- O'melveny & Myers
Dean A Ziehl
Jonathan A Loeb
P Sabin Willett
Richard K Diamond (TR)
Jeffrey Rosenfeld

Defendant(s):

Paul Roman

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

O'Melveny & Myers, LLP

Represented By
Howard Steinberg

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, April 24, 2017

Hearing Room 303

2:00 PM

CONT... Empire Land, LLC

Chapter 7

	P Sabin Willett
Peter T. Healy	Represented By Howard Steinberg P Sabin Willett
Neil M Miller	Represented By Jonathan A Loeb Jeffrey Rosenfeld P Sabin Willett
Empire Partners, Inc., a California	Represented By Jonathan A Loeb Jeffrey Rosenfeld P Sabin Willett
James P Previti	Represented By Jonathan A Loeb Jeffrey Rosenfeld P Sabin Willett
Larry Day	Represented By Jonathan A Loeb Jeffrey Rosenfeld P Sabin Willett

Plaintiff(s):

RICHARD K DIAMOND

Represented By
Richard S Berger
Peter M Bransten
John P Reitman
Michael I Gottfried
Aleksandra Zimonjic
Monica Rieder
Cynthia M Cohen
Roye Zur

Trustee(s):

Richard K Diamond (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, April 24, 2017

Hearing Room 303

2:00 PM

CONT... Empire Land, LLC

Chapter 7

Michael I Gottfried
Richard S Berger
Rodger M Landau
Richard K Diamond
Peter M Bransten
Aleksandra Zimonjic
Monica Rieder
Lisa N Nobles
Peter J Gurfein
Paul Hastings
Roye Zur
Amy Evans
Best Best & Krieger
Franklin C Adams
Thomas J Eastmond

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, April 24, 2017

Hearing Room 303

2:00 PM

6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:10-01329 DIAMOND v. Empire Partners, Inc., a California Corporation et

#3.00 CONT Status Conference re complaint
(Defendant - Empire Partners, Inc) HOLDING DATE

From: 3/6/13, 6/5/13, 9/11/13, 11/13/13,12/18/13, 2/5/14, 3/12/14, 4/9/14,
4/16/14, 5/21/14, 8/27/14, 8/28/14, 9/10/14, 9/29/14, 11/10/14, 11/19/14,
1/21/15, 1/28/15, 2/19/15, 3/24/15, 5/28/15, 6/23/15, 8/12/15, 9/18/15, 10/6/15,
12/8/15, 1/20/16, 2/18/16, 3/23/16, 4/5/16, 4/13/16, 4/22/16, 6/6/16, 7/25/16,
10/3/16, 11/14/16, 1/23/17, 2/27/17

EH__

Docket 1

Party Information

Debtor(s):

Empire Land, LLC

Represented By
James Stang
Robert M Saunders
Michael I Gottfried
----- O'melveny & Myers
Dean A Ziehl
Jonathan A Loeb
P Sabin Willett
Richard K Diamond (TR)
Jeffrey Rosenfeld

Defendant(s):

Previti Realty Fund, L.P.

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

The James Previti Family Trust

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, April 24, 2017

Hearing Room 303

2:00 PM

CONT... Empire Land, LLC

Chapter 7

Empire Partners, Inc., a California

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

James P Previti

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

Plaintiff(s):

RICHARD K DIAMOND

Represented By
Richard S Berger
Michael I Gottfried
Aleksandra Zimonjic
Monica Rieder
John P Reitman
Peter M Bransten
Cynthia M Cohen
Roye Zur

Trustee(s):

Richard K Diamond (TR)

Represented By
Michael I Gottfried
Richard S Berger
Rodger M Landau
Richard K Diamond
Peter M Bransten
Aleksandra Zimonjic
Monica Rieder
Lisa N Nobles
Peter J Gurfein
Paul Hastings
Roye Zur
Amy Evans
Best Best & Krieger
Franklin C Adams
Thomas J Eastmond

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:12-22321 Douglas Lee Kendrick and Jennifer Lyn Kendrick

Chapter 13

#1.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 23631 Coast Live Oak Ln, Murrieta CA

MOVANT: WELLS FARGO BANK

From: 4/11/17

EH__

Docket 63

Tentative Ruling:

4/11/17

Service: Proper

Opposition: Yes

Debtors request a continuance based on a pending application for a loan modification and assert a significant equity cushion. Based on the correspondence attached to the Debtors' Opposition, Wells Fargo indicated that a decision could take up to 30 days (or up to April 21) regarding the Debtors' requested loan modification. Based on the foregoing, the Court is inclined to GRANT the Debtors a short continuance.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Douglas Lee Kendrick

Represented By
Matthew Donahue
John F Brady

Joint Debtor(s):

Jennifer Lyn Kendrick

Represented By
Matthew Donahue
John F Brady

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT... Douglas Lee Kendrick and Jennifer Lyn Kendrick

Chapter 13

Movant(s):

WELLS FARGO BANK, NA

Represented By
Megan E Lees
Milton Williams

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:13-14560 David Sandoval and Mary Celine Sandoval

Chapter 13

#2.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 35816 Country Ridge Rd, Yucaipa, CA 92399-3229

MOVANT: WELLS FARGO BANK NA

EH__

Docket 71

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: Yes

While it appears to the Court that Debtors may have missed several mortgage payments over the past few years, the evidence provided by Wells Fargo is inadequate to establish cause for relief. Wells Fargo's Exhibit 5 includes unexplained "co-mingled funds adjustments", totaling more than \$20,000, and appears to document that Debtors have made their mortgage payments for at least eight months, in apparent contradiction of the motion's account of their post-confirmation delinquency. There is also a general incoherency in the organization of Exhibit 5's columns. As one example, payments made by Debtors for February and March 2016 appear on page 3, and are "applied" to payments due on June 2015, despite a payment being made in June 2015, documented on page 2, at a time when Debtors had a positive suspense balance. Wells Fargo's non-chronological organization of payment history is, at best, unclear.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

David Sandoval

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT... David Sandoval and Mary Celine Sandoval

Chapter 13

Bryant C MacDonald

Joint Debtor(s):

Mary Celine Sandoval

Represented By

Bryant C MacDonald

Movant(s):

Wells Fargo Bank, N.A.

Represented By

Dane W Exnowski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:13-15155 Luis Antonio Palomino and Mariella Roxana Palomino

Chapter 13

#3.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 7287 Parkside Place, Rancho Cucamonga, CA 91701-6321

MOVANT: WELLS FARGO BANK NA

EH _____

Docket 103

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: Yes

Although relief from stay appears warranted, parties to address status of adequate
protection discussions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Luis Antonio Palomino

Represented By
David Lozano

Joint Debtor(s):

Mariella Roxana Palomino

Represented By
David Lozano

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT... Luis Antonio Palomino and Mariella Roxana Palomino

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:13-24979 Jennifer L. Kurtz

Chapter 13

#4.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 13181 Gabay Court, Rancho Cucamonga, CA 91739

MOVANT: US BANK NATIONAL ASSOCIATION AS TRUSTEE IN TRUST FOR REGISTERED HOLDERS OF CHASE FUNDING MORTGAGE LOAN

EH__

Docket 58

***** VACATED *** REASON: ADEQUATE PROTECTION ORDER
ENTERED 4/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jennifer L. Kurtz

Represented By
Steven A Alpert

Movant(s):

U.S. Bank National Association, as

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:13-26277 Charles Frederick Biehl

Chapter 7

#5.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 3338 Tempe Dr Huntington Beach, CA 92649

MOVANT: BAYVIEW LOAN SERVICING LLC AS SERVICING AGENT FOR
M&T BANK

From: 1/24/17, 4/11/17

EH__

Docket 162

***** VACATED *** REASON: CONTINUED TO 6/27/17 AT 10:00 AM**

Tentative Ruling:

Tentative Ruling:

Service is Proper
Opposition: Yes

Given the amount of equity as well as the Trustee's pending adversary related to the property, the Court is inclined to CONTINUE the hearing on the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Charles Frederick Biehl

Represented By
Daryl L Binkley - INACTIVE -
Steven L Bryson

Movant(s):

Bayview Loan Servicing, LLC as

Represented By
Kristin A Zilberstein

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT... Charles Frederick Biehl

Chapter 7

Trustee(s):

John P Pringle (TR)

Represented By
James C Bastian Jr
Elyza P Eshaghi
Brandon J Iskander

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:14-17400 J. T. Site Development, Inc.

Chapter 7

#6.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: (2013 GMC SIERRA Vin #
1GD01ZCG9DF214106)

MOVANT: ALLY BANK

EH__

Docket 70

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY relief from the automatic stay pursuant to § 362(d)(2) for lack of cause shown.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

J. T. Site Development, Inc.

Represented By
Andrew S Bisom

Movant(s):

Ally Bank

Represented By
Adam N Barasch

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT... J. T. Site Development, Inc.

Chapter 7

Trustee(s):

Larry D Simons (TR)

Represented By
Frank X Ruggier

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:15-15831 William R Parker and Cheryl Parker

Chapter 13

#7.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 254 Cuckoo Dr, San Jacinto, CA 92582

MOVANT: WELLS FARGO BANK NA

From: 2/28/17, 3/28/17

EH__

Docket 64

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William R Parker

Represented By
Julie J Villalobos

Joint Debtor(s):

Cheryl Parker

Represented By
Julie J Villalobos

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Nancy L Lee
Sabekhoh Nahar
Jason C Kolbe
William P Barrett

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:15-21410 Eddie Hernandez

Chapter 13

#8.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 8250 Inca Trail, Yucca Valley, CA 92284

MOVANT: NATIONSTAR MORTGAGE LLC

EH__

Docket 62

***** VACATED *** REASON: ORDER ENTERED 4/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eddie Hernandez

Represented By
Andy C Warshaw

Movant(s):

Nationstar Mortgage LLC

Represented By
Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:16-10451 Shahla Salamat

Chapter 13

#9.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3695 Bayberry Dr, Chino Hills, CA 91709

MOVANT: PNC BANK, NATIONAL ASSOCIATION

From: 2/28/17, 3/7/17, 3/28/17

EH__

Docket 49

***** VACATED *** REASON: ORDER ENTERED 4/19/17**

Tentative Ruling:

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT relief from § 1301(a) stay. GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3 and 12.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Shahla Salamat

Represented By
Amid Bahadori

Movant(s):

PNC Bank, National Association, its

Represented By
Kristin A Zilberstein
Jennifer C Wong

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT... Shahla Salamat

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:16-12986 Efren Rubio

Chapter 13

#10.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 764 Allepo Pine St, Perris, CA 92571

MOVANT: THE BANK OF NEW YORK MELLON fka THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATE HOLDERS OF THE CWABS

EH__

Docket 47

***** VACATED *** REASON: CONTINUED TO 5/30/17 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Efren Rubio

Represented By
Inez Tinoco-Vaca

Movant(s):

The Bank of New York Mellon fka

Represented By
Erin M McCartney

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:16-13375 Antoine Williams

Chapter 13

#11.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 15244 Hawk Street, Fontana, CA 92336

MOVANT: US BANK NATIONAL ASSOCIATION

EH _____

Docket 46

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: Yes

While relief from stay appears warranted, parties to discuss adequate protection if
amounts in default are not fully cured by hearing.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Antoine Williams

Represented By
Gary Leibowitz

Movant(s):

U.S. Bank National Association, as

Represented By
Dane W Exnowski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:16-16741 Michael Stephen Williams

Chapter 7

#12.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 740 North Parkside Avenue, Ontario, CA

MOVANT: FCI LENDER SERVICES INC

EH__

Docket 60

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Michael Stephen Williams

Represented By
Michael R Lewis

Movant(s):

FCI Lender Services, Inc., servicing

Represented By
Edward G Schloss

Trustee(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT...

Michael Stephen Williams

Carmela Pagay

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:16-20036 Hector Manuel Chavez, Jr.

Chapter 13

#13.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 28211 Kane Court, Highland, CA 92346

MOVANT: PLANET HOME LENDING LLC ITS SUCCESSORS AND ASSIGNS
EH__

Docket 24

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT relief from § 1301(a) co-debtor stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under ¶ 13 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Hector Manuel Chavez Jr.

Represented By
Matthew D Resnik

Movant(s):

Planet Home Lending, LLC

Represented By
Michelle R Ghidotti

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT... Hector Manuel Chavez, Jr.

Chapter 13

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:16-21232 Alejandro Salinas, Jr.

Chapter 13

#14.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: (2013 GMC SIERRA Vin #
3GTP2WE70DG291523)

MOVANT: ALLY FINANCIAL INC

EH__

Docket 25

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT relief from § 1301(a) co-debtor stay. GRANT request under ¶ 2.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Alejandro Salinas Jr.

Represented By
Nicholas M Wajda

Movant(s):

Ally Financial Inc.

Represented By
Adam N Barasch

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT... Alejandro Salinas, Jr.

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:17-10489 John Scott Reynolds

Chapter 7

#15.00 Motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Pending State Court Action: Reynolds v. Reynolds IND 1300267, Superior Court County of Riverside (Indio Branch)

EH__

Docket 9

Tentative Ruling:

TENTATIVE RULING:

4/25/17

The extent of the relief requested by Movant is unclear. Outside of a motion for a protective order, which was scheduled to be heard in state court last week, there are only general references to the conclusion of the dissolution proceeding as well as "miscellaneous issues". Furthermore, there are technical issues with the motion: (1) Debtor was not properly served; (2) the motion requests retroactive annulment of the stay but provides no cause or declaration; and (3) the request for relief does not even request relief from the automatic stay. Finally, the Court agrees with the Trustee that issues regarding adjudication of property of the estate appropriately belong within the Bankruptcy Court. Given the technical issues and the fact that the motion is unclear what Movant is requesting, the Court is inclined to DENY the motion without prejudice.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

John Scott Reynolds

Represented By
Jenny L Doling

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT... John Scott Reynolds

Chapter 7

Movant(s):

Julie Ann Reynolds

Represented By
Paul M Stoddard

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:17-11028 James W Schwartz and Holly L Bryson

Chapter 13

#16.00 CONT Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2014 Hyundai GLS

MOVANT: XCEED FINANCIAL CREDIT UNION

From: 3/28/17, 4/11/17

EH__

Docket 22

***** VACATED *** REASON: PER ORDER ENTERED 4/18/17**

Tentative Ruling:

3/28/17

Service is Proper

Opposition: Yes

Debtor asserts that he is treating the Movant's claim in full through his chapter 13 plan. The Plan was confirmed on March 23, 2017, although the order confirming plan has not yet been entered. Here, the plan does not provide for pre-confirmation adequate protection, and there is no evidence Debtor is not making plan payments.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

James W Schwartz

Represented By
Michael Smith

Joint Debtor(s):

Holly L Bryson

Represented By
Michael Smith

Movant(s):

Xceed Financial Credit Union

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT... James W Schwartz and Holly L Bryson

Chapter 13

Karel G Rocha

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:17-11095 Kayla Marie Rojas

Chapter 7

#17.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 13075 Kismet Avenue, Sylmar, CA 91342

MOVANT: DEUTSCHE BANK

EH__

Docket 12

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (4), based on unauthorized transfers and multiple cases affecting the property. GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3, and 10.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Kayla Marie Rojas

Represented By
Kris Crawford

Movant(s):

Deutsche Bank National Trust

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT... Kayla Marie Rojas

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:17-11179 Berenice Hernandez Cabrera

Chapter 7

#18.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2008 Toyota Corolla

MOVANT: VEROS CREDIT LLC

EH__

Docket 10

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper in the Circumstances
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Berenice Hernandez Cabrera

Represented By
D Justin Harelik

Movant(s):

Veros Credit, LLC

Represented By
Robert M Tennant

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:17-11335 Brian Scott Bunnell and Wendi Lynn Bunnell

Chapter 13

#19.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2015 NISSAN ALTIMA, VIN #
1N4BL3AP3FC575719

MOVANT: NISSAN MOTOR ACCEPTANCE CORPORATION

EH__

Docket 16

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2).
GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative
request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or
written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Brian Scott Bunnell

Represented By
Todd L Turoci

Joint Debtor(s):

Wendi Lynn Bunnell

Represented By
Todd L Turoci

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT... Brian Scott Bunnell and Wendi Lynn Bunnell

Chapter 13

Movant(s):

NISSAN MOTOR ACCEPTANCE

Represented By
Michael D Vanlochem

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:17-11670 AMANDO MORALES and ALICIA MALDONADO

Chapter 7

#20.00 Motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Real Property

MOVANT: MARTHA E GUERRERO AND EDUARDO E GUERRERO

EH__

Docket 11

***** VACATED *** REASON: CONTINUED TO 5/30/17 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

AMANDO MORALES

Represented By
William D Gurney

Joint Debtor(s):

ALICIA MALDONADO JIMENEZ

Represented By
William D Gurney

Movant(s):

Eduardo E. Guerrero

Represented By
Christopher J Langley

Trustee(s):

Charles W Daff (TR)

Represented By
Brandon J Iskander

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:17-11704 Micah Paul Graham and Christina Aida Graham

Chapter 7

#21.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2007 DODGE RAM 1500, VIN
1D7HU18267S204468

MOVANT: AMERICREDIT FINANCIAL SERVICES, INC dba GM FINANCIAL

EH _____

Docket 15

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2).
GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative
request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or
written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Micah Paul Graham

Represented By
Nicholas M Wajda

Joint Debtor(s):

Christina Aida Graham

Represented By
Nicholas M Wajda

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT... Micah Paul Graham and Christina Aida Graham

Chapter 7

Movant(s):

AmeriCredit Financial Services, Inc.

Represented By

Mandy D Youngblood

Sheryl K Ith

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:17-11752 Christopher Wilkins

Chapter 7

#22.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 24016 Bessemer Street, Los Angeles, CA 91367

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 9

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (4), based on unauthorized transfers and multiple filings affecting the property. GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3, and 5. DENY alternative request under ¶ 14 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Christopher Wilkins

Pro Se

Movant(s):

Wells Fargo Bank, N.A. as Trustee

Represented By
Erin M McCartney

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:17-12322 Kyung Sang Lee

Chapter 13

#23.00 Motion for relief from the automatic stay with supporting declarations
UNLAWFUL DETAINER RE: 32834 Pine Circle, Temecula, California 92592

MOVANT: HUFSDAR INVESTORS LLC

EH__

Docket 8

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. GRANT *in rem* requests under ¶¶ 9 and 11 based on Debtor's failure to file schedules and that Debtor only listed one creditor. DENY requests under ¶¶ 3, 4, 7, and 10 for lack of cause shown. DENY alternative request under ¶ 12 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Kyung Sang Lee

Pro Se

Movant(s):

Robert H Tyler

Represented By
Robert H Tyler

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT... Kyung Sang Lee

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:17-12888 Tyra Bagby

Chapter 13

#24.00 Motion for relief from the automatic stay with supporting declarations
UNLAWFUL DETAINER RE: 13242 Lakota St. Moreno Valley CA 92553

MOVANT: STATEWIDE PROPERTY SERVICES, INC. KEN NEWBURY

EH__

Docket 7

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Tyra Bagby Pro Se

Movant(s):

Statewide Property Services, Inc. Represented By
Barry L O'Connor

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:17-10439 Raquel Renee Villa

Chapter 7

#24.10 Motion for relief from the automatic stay with supporting declarations
UNLAWFUL DETAINER RE: 3482 Fieldcrest Ct, Perris, CA

MOVANT: BILLY HERNANDEZ

EH__

Docket 17

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 4. DENY requests under ¶¶ 3 and 8 for lack of cause shown.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Raquel Renee Villa

Represented By
Kathleen G Alvarado

Movant(s):

Billy Hernandez

Represented By
Robert A Krasney

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

6:17-12733 Lee Curtis Appel and Dayon Andrea Appel

Chapter 7

#24.20 Motion for relief from the automatic stay with supporting declarations
UNLAWFUL DETAINER RE: 17600 Caprice Way, Victorville, CA

MOVANT: ROBERT RASKIN

EH__

Docket 17

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT relief from § 1301(a) stay. GRANT request under ¶ 2.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Lee Curtis Appel Pro Se

Joint Debtor(s):

Dayon Andrea Appel Pro Se

Movant(s):

Robert Raskin Represented By
Helen G Long

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, April 25, 2017

Hearing Room 303

10:00 AM

CONT... Lee Curtis Appel and Dayon Andrea Appel

Chapter 7

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, April 25, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#25.00 CONT First Omnibus Objection of Debtor-In-Possession Allied Injury Management, Inc. Seeking Disallowance of Certain Proofs of Claim

From: 11/8/16, 12/6/16, 1/10/17, 3/7/17,4/4/17

EH__

Docket 83

***** VACATED *** REASON: CONTINUED TO 6/27/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
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Tuesday, April 25, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01238 Allied Injury Management, Inc. v. De La Llana et al

#26.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01238. Complaint by Allied Injury Management, Inc. against Sylvia De La Llana, Myelin Diagnostics, Sunkist Imaging Medical Center, Shoreline Medical Group, Inc., Paramount Family Health Center, Javier Torres, Justin Paquette, Nor Cal Pain Management Medical Group, Inc., One Stop Multi-Specialty Medical Group & Therapy, Inc.. (Charge To Estate). Complaint for Interpleader and Declaratory Relief Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy

From: 11/15/16, 12/6/16, 12/20/16, 2/28/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Justin Paquette

Pro Se

Javier Torres

Pro Se

One Stop Multi-Specialty Medical

Pro Se

Nor Cal Pain Management Medical

Pro Se

Paramount Family Health Center

Pro Se

Myelin Diagnostics

Pro Se

Sylvia De La Llana

Pro Se

**United States Bankruptcy Court
Central District of California
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2:00 PM

CONT... Allied Injury Management, Inc.

Chapter 11

Shoreline Medical Group, Inc. Pro Se

Sunkist Imaging Medical Center Pro Se

Plaintiff(s):

Allied Injury Management, Inc. Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR) Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
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Tuesday, April 25, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01279 Allied Injury Management, Inc. v. One Stop Multi-Specialty Medical Group

#27.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01279. Complaint by Allied Injury Management, Inc. against One Stop Multi-Specialty Medical Group & Therapy, Inc., One Stop Multi-Specialty Medical Group, Inc., Nor Cal Pain Management Medical Group, Inc.. (Charge To Estate). Complaint for (1) Breach of Contract; (2) Account Stated; and (3) Unjust Enrichment Nature of Suit: (14 (Recovery of money/property - other))

From: 1/24/17, 3/7/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/27/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Nor Cal Pain Management Medical

Represented By
Maria K Pum

One Stop Multi-Specialty Medical

Represented By
Maria K Pum

One Stop Multi-Specialty Medical

Represented By
Maria K Pum

Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

**United States Bankruptcy Court
Central District of California
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Tuesday, April 25, 2017

Hearing Room 303

2:00 PM

CONT... Allied Injury Management, Inc.

Chapter 11

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
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Tuesday, April 25, 2017

Hearing Room 303

2:00 PM

6:16-14140 Welch Management Corporation

Chapter 11

#28.00 CONT Order (1) Setting Scheduling Hearing And Case Management Conference And (2) Requiring Status Report

From: 6/7/16, 8/30/16, 11/1/16,3/7/17, 4/18/17

Also # 27

EH__

Docket 4

***** VACATED *** REASON: CONTINUED TO 5/9/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Welch Management Corporation

Represented By
Stephen R Wade
W. Derek May

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, April 25, 2017

Hearing Room 303

2:00 PM

6:16-14140 Welch Management Corporation

Chapter 11

#29.00 Disclosure Statement describing Chapter 11 Plan of Reorganization

FROM: 4/18/17

Also #28

EH__

Docket 140

***** VACATED *** REASON: CONTINUED TO 5/9/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Welch Management Corporation

Represented By
Stephen R Wade
W. Derek May

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, April 26, 2017

Hearing Room 303

11:00 AM

6:10-13285 Laureen Martha Harley

Chapter 7

#1.00 Motion objecting to debtor's claimed exemption in funds pursuant to California Code Of Civil Procedure Section 583.140

EH__

Docket 35

***** VACATED *** REASON: CONTINUED TO 5/10/17 AT 11:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laureen Martha Harley

Represented By

James M Powell - DISBARRED -

Michael H Raichelson

Trustee(s):

Steven M Speier (TR)

Represented By

Robert P Goe

6:10-14843 Benjie Lee Soliz and Judy Lynn Soliz

Chapter 7

#2.00 Trustee's Final Report and Applications for Compensation

EH__

Docket 62

Tentative Ruling:

04/26/2017

APPEARANCES REQUIRED.

Party Information

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, April 26, 2017

Hearing Room 303

11:00 AM

CONT... Benjie Lee Soliz and Judy Lynn Soliz

Chapter 7

Debtor(s):

Benjie Lee Soliz

Represented By
Joseph L Borrie

Joint Debtor(s):

Judy Lynn Soliz

Represented By
Joseph L Borrie

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe

6:16-12902 Erma Uribe Saucedo

Chapter 7

#3.00 Trustee's Final Report and Applications for Compensation

EH__

Docket 31

Tentative Ruling:

04/26/2017

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the following administrative claims will be allowed:

Trustee Fees: \$ 595
Trustee Expenses: N/A

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Courtroom 303 Calendar**

Wednesday, April 26, 2017

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11:00 AM

CONT... **Erma Uribe Saucedo** **Chapter 7**

The application for compensation is approved and the trustee may submit on the tentative.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Erma Uribe Saucedo

Represented By
Rabin J Pournazarian

Trustee(s):

Howard B Grobstein (TR)

Pro Se

6:13-24939 **Monay N Matta** **Chapter 7**

#4.00 CONT US Trustee's Motion to Fine and Enjoin Bankruptcy Petition Preparer
Donna Nelson

From: 2/1/17

EH__

Docket 23

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monay N Matta

Pro Se

Movant(s):

United States Trustee (RS)

Represented By
Abram Feuerstein esq

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, April 26, 2017

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11:00 AM

CONT... Monay N Matta

Chapter 7

Michael J Bujold
Mohammad Tehrani
Everett L Green

Trustee(s):

Lynda T. Bui (TR)

Pro Se

6:14-21837 David J. Varela

Chapter 7

#5.00 Motion to Avoid Judicial Lien with Cal-West Equities, Inc.

Also # 6

EH__

Docket 116

Tentative Ruling:

04/26/2017

BACKGROUND

On September 21, 2014 ("Petition Date"), David J. Varela ("Debtor") filed his petition for chapter 7 relief. Howard Grobstein is the duly appointed chapter 7 trustee ("Trustee"). Among the assets of the estate is real property located at 41150 Marseille Court in Murrieta, CA 92562 (the "Property").

On February 23, 2017, the Debtor filed motions to avoid the liens of Cal-West Equities, Inc. ("Cal-West") and LVNV Funding, LLC ("LVNV") pursuant to 11 U.S.C. § 522(f). The Debtor subsequently withdrew the motions.

On March 9, 2017, the Debtor filed amended Schedules A, B and C. The initially filed schedules provided no basis for exemption of the Debtor's Property. However, the amended schedules specified that the Debtor was exempting \$100,000 in the Property pursuant to CCP § 704.730(a)(2).

On March 20, 2017, the Debtor filed two new motions again seeking to avoid

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11:00 AM

CONT... David J. Varela

Chapter 7

the liens of Cal-West and LVNV (the "Motions"). On April 10, 2017, Cal-West obtained an order granting it relief from stay as to the Property. On April 12, 2017, Cal-West filed opposition to the Motion (the "Opposition"). The Debtor replied on April 18, 2017, and filed objection to the declaration of Dan Townsend regarding the fair market value of the Property.

DISCUSSION

I. LIEN AVOIDANCE CALCULATION

Cal-West does not dispute that the calculation of the Debtor's interest in the Property should be limited to his 50% interest. As such, the only material issue in dispute appears to be regarding the total fair market value of the Property.

Section 522(f)(1)(A) provides in relevant part: "the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled ... if such lien is (A) a judicial lien." 11 U.S.C. § 522(f)(1)(A) (emphasis supplied).

Section 522(f)(2) prescribes a formula for calculating whether an exemption is impaired:

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

- (i) the lien;
- (ii) all other liens on the property; and
- (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

11 U.S.C. § 522(f)(2) (emphasis supplied). That is, an exemption is impaired if subtracting all of the unavoidable liens and the exemption (here, totaling \$252,134.90)

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Wednesday, April 26, 2017

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11:00 AM

CONT... David J. Varela

Chapter 7

from the value of the debtor's half interest yields zero or less. *See In re Meyer*, 373 B.R. 84, 89 (9th Cir. BAP 2007).

The Debtor's valuation is \$360,000. The Debtor's 50% interest in that amount is \$180,000. Cal-West's valuation is \$410,000. The Debtor's 50% interest in that amount is \$205,000. Under either valuation, subtracting \$252,134.90 results in a negative number. Thus, the Debtor is correct that Cal-West's valuation changes nothing. The liens of both LVNV and Cal-West impair the Debtor's claimed exemption and are thus avoidable pursuant to 11 U.S.C. § 522(f).

II. LACHES

In *Law v. Siegel*, 134 S. Ct. 1188 (2014), the Supreme Court held that bankruptcy courts may not create non-statutory exceptions to the bankruptcy code. *Law* specifically addressed exemptions under § 522 and indicated that the bankruptcy code set forth the specific circumstances under which Congress determined that an exemption could be disallowed. *Id.* The Supreme Court then expressly found that a bankruptcy had no authority under federal law to disallow exemptions for reasons other than those set forth under § 522 or, alternatively, under any grounds applicable under state law. *Id.*

Cal-West has cited to *Jefferson v. Tom*, 52 Cal.App.2d 432 (1942), for the proposition that laches applies under California law as a basis to disallow a debtor's exemption. However, the Court need not reach Cal-West's argument because FRBP 4003(b) provides parties in interest with 30 days from the date of any amendment to a schedule to file an objection to property claimed as exempt. Here, the Debtor amended his schedules on March 9, 2017. Thus, the deadline to file an objection to the Debtor's exemption would have lapsed on or about April 8, 2017. Cal-West did not timely object to the claimed exemption. Instead, the objection to the Debtor's exemption comes in the form of an opposition to the Debtor's motions to avoid lien under § 522 (f). Based on the foregoing, the Court finds that Cal-West's laches argument and objection to the exemption is untimely and is otherwise not relevant to a determination of whether the lien of Cal-West impairs the Debtor's properly claimed exemption.

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11:00 AM

CONT... David J. Varela

Chapter 7

TENTATIVE RULING

For the foregoing reasons, the Court is inclined GRANT the Motions finding that the liens of LVNV and Cal-West impair the Debtor's properly claimed exemption.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

David J. Varela

Represented By
Thomas J Tedesco

Movant(s):

David J. Varela

Represented By
Thomas J Tedesco

Trustee(s):

Howard B Grobstein (TR)

Represented By
Nina Z Javan
Meghann A Triplett
Noreen A Madoyan

6:14-21837 David J. Varela

Chapter 7

#6.00 Motion to Avoid Judicial Lien with LVNV Funding, LLC

Also # 5

EH__

Docket 117

Tentative Ruling:

04/26/2017

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, April 26, 2017

Hearing Room 303

11:00 AM

CONT... David J. Varela

Chapter 7

BACKGROUND

On September 21, 2014 ("Petition Date"), David J. Varela ("Debtor") filed his petition for chapter 7 relief. Howard Grobstein is the duly appointed chapter 7 trustee ("Trustee"). Among the assets of the estate is real property located at 41150 Marseille Court in Murrieta, CA 92562 (the "Property").

On February 23, 2017, the Debtor filed motions to avoid the liens of Cal-West Equities, Inc. ("Cal-West") and LVNV Funding, LLC ("LVNV") pursuant to 11 U.S.C. § 522(f). The Debtor subsequently withdrew the motions.

On March 9, 2017, the Debtor filed amended Schedules A, B and C. The initially filed schedules provided no basis for exemption of the Debtor's Property. However, the amended schedules specified that the Debtor was exempting \$100,000 in the Property pursuant to CCP § 704.730(a)(2).

On March 20, 2017, the Debtor filed two new motions again seeking to avoid the liens of Cal-West and LVNV (the "Motions"). On April 10, 2017, Cal-West obtained an order granting it relief from stay as to the Property. On April 12, 2017, Cal-West filed opposition to the Motion (the "Opposition"). The Debtor replied on April 18, 2017, and filed objection to the declaration of Dan Townsend regarding the fair market value of the Property.

DISCUSSION

I. LIEN AVOIDANCE CALCULATION

Cal-West does not dispute that the calculation of the Debtor's interest in the Property should be limited to his 50% interest. As such, the only material issue in dispute appears to be regarding the total fair market value of the Property.

Section 522(f)(1)(A) provides in relevant part: "the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled ... if such lien is (A) a judicial lien." 11 U.S.C. § 522(f)(1)(A) (emphasis supplied).

Section 522(f)(2) prescribes a formula for calculating whether an exemption is

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impaired:

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

11 U.S.C. § 522(f)(2) (emphasis supplied). That is, an exemption is impaired if subtracting all of the unavoidable liens and the exemption (here, totaling \$252,134.90) from the value of the debtor's half interest yields zero or less. *See In re Meyer*, 373 B.R. 84, 89 (9th Cir. BAP 2007).

The Debtor's valuation is \$360,000. The Debtor's 50% interest in that amount is \$180,000. Cal-West's valuation is \$410,000. The Debtor's 50% interest in that amount is \$205,000. Under either valuation, subtracting \$252,134.90 results in a negative number. Thus, the Debtor is correct that Cal-West's valuation changes nothing. The liens of both LVNV and Cal-West impair the Debtor's claimed exemption and are thus avoidable pursuant to 11 U.S.C. § 522(f).

II. LACHES

In *Law v. Siegel*, 134 S. Ct. 1188 (2014), the Supreme Court held that bankruptcy courts may not create non-statutory exceptions to the bankruptcy code. *Law* specifically addressed exemptions under § 522 and indicated that the bankruptcy code set forth the specific circumstances under which Congress determined that an exemption could be disallowed. *Id.* The Supreme Court then expressly found that a bankruptcy had no authority under federal law to disallow exemptions for reasons other than those set forth under § 522 or, alternatively, under any grounds applicable under state law. *Id.*

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Cal-West has cited to *Jefferson v. Tom*, 52 Cal.App.2d 432 (1942), for the proposition that laches applies under California law as a basis to disallow a debtor's exemption. However, the Court need not reach Cal-West's argument because FRBP 4003(b) provides parties in interest with 30 days from the date of any amendment to a schedule to file an objection to property claimed as exempt. Here, the Debtor amended his schedules on March 9, 2017. Thus, the deadline to file an objection to the Debtor's exemption would have lapsed on or about April 8, 2017. Cal-West did not timely object to the claimed exemption. Instead, the objection to the Debtor's exemption comes in the form of an opposition to the Debtor's motions to avoid lien under § 522 (f). Based on the foregoing, the Court finds that Cal-West's laches argument and objection to the exemption is untimely and is otherwise not relevant to a determination of whether the lien of Cal-West impairs the Debtor's properly claimed exemption.

TENTATIVE RULING

For the foregoing reasons, the Court is inclined GRANT the Motions finding that the liens of LVNV and Cal-West impair the Debtor's properly claimed exemption.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

David J. Varela

Represented By
Thomas J Tedesco

Movant(s):

David J. Varela

Represented By
Thomas J Tedesco

Trustee(s):

Howard B Grobstein (TR)

Represented By
Nina Z Javan

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CONT... David J. Varela

Chapter 7

Meghann A Triplett
Noreen A Madoyan

6:15-15514 Manuel Jose Saldana

Chapter 7

#7.00 CONT Motion to disallow Claimed Homestead Exemption

From: 3/1/17

EH__

Docket 55

***** VACATED *** REASON: CONTINUED TO 6/21/17 AT 11:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Jose Saldana

Represented By
Robert G Uriarte

Trustee(s):

Lynda T. Bui (TR)

Represented By
Leonard M Shulman
Elyza P Eshaghi
Rika Kido

6:15-20280 Kai Lin Wu

Chapter 7

#8.00 Motion of United States Trustee for an Order to Show Cause Why Frank Osekowsky and Frank's Paralegal Services Should Not Be Held in Contempt of Court Pursuant to 11 U.S.C. § 105 and Federal Rule of Bankruptcy Procedure 9020; Memo of P's and A's; Decl of Mohammad Tehrani in Support with Exhibits

EH__

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11:00 AM

CONT... Kai Lin Wu

Chapter 7

Docket 57

Tentative Ruling:

04/26/2017

BACKGROUND

On October 10, 2015 ("Petition Date"), Kai Lin Wu ("Debtor") filed a petition for chapter 7 relief.

On November 20, 2015, the Office of the United States Trustee ("UST") filed a motion for fine and/or disgorgement of fees against bankruptcy petition preparer Frank Osekowsky Frank's Paralegal Services (collectively, "Osekowsky"). Prior to the hearing, the UST and Osekowsky reached a stipulation. On January 7, 2016, the Court entered an order granting the UST's motion pursuant to the terms of the stipulation (the "Prior Order").

On March 28, 2017, the UST filed a motion for an order to show cause as to why bankruptcy petition preparer should not be held in contempt of Court ("Motion") for failure to comply with the terms of the BPP Order.

Service appears proper and no opposition has been filed.

DISCUSSION

The UST seeks issuance of an order to show cause why Osekowsky should not be held in civil contempt for failure to make payments due and owing under the terms of the Payment Schedule approved pursuant to the Prior Order. Per the Payment Schedule, at least two payments came due prior to the UST's filing of the instant Motion and the UST has provided evidence that no payments have been made by Osekowsky as of March 23, 2017. (Tehrani Decl. ¶6).

TENTATIVE RULING

Based on the UST's evidence, in addition to the failure of Osekowsky to file opposition to the Motion, which this Court deems as consent to the granting of the Motion pursuant to LBR 9013-1(h), the Court is inclined to GRANT the Motion.

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CONT... Kai Lin Wu

Chapter 7

The UST is to lodge an order granting the Motion and a proposed order to show cause for the Court's review.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Kai Lin Wu

Represented By
Paul Y Lee

Movant(s):

United States Trustee (RS)

Represented By
Mohammad Tehrani

Trustee(s):

John P Pringle (TR)

Represented By
Wesley H Avery

6:16-14390 Jina Soo Choi

Chapter 7

#9.00 Motion of United States Trustee For An Order Disgorging Fees, Assessing Damages, And Imposing Fines And Against Bankruptcy Petition Preparer Sandra Cooper Pursuant to 11 U.S.C. § 110

Case Dismissed: 3/6/17

EH__

Docket 70

Tentative Ruling:

04/26/2017
BACKGROUND

**United States Bankruptcy Court
Central District of California
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CONT...

Jina Soo Choi

Chapter 7

On May 16, 2016 ("Petition Date"), Jina Soo Choi ("Debtor") filed her petition for chapter 13 relief. On August 4, 2016, the case was converted to a case under chapter 7. On January 6, 2017, the Debtor moved the Court for an order dismissing her case. The case was dismissed on March 6, 2017.

On March 10, 2017, the Office of the United States Trustee ("UST") filed its Motion of United States Trustee For An Order Disgorging Fees, Assessing Damages, And Imposing Fines And Against Bankruptcy Petition Preparer Sandra Cooper Pursuant to 11 U.S.C. § 110 ("Motion"). The Motion was amended on March 29, 2017.

On April 5, 2017, Sandra Cooper ("Cooper") filed her opposition to the Motion ("Opposition"). On April 19, 2017, the UST filed its reply to the Opposition ("Reply").

DISCUSSION

The Motion asserts that Cooper violated 11 U.S.C. § 110 by failing to disclose her identity as required by statute, by executing the Debtor's signature, and by failing to furnish copies of the filed bankruptcy documents to the Debtor. Based thereon, the UST requests disgorgement of fees, statutory damages of \$2,000 pursuant to § 110(i), and payment of fines to the UST in the total sum of \$21,000 (\$6,000 for individual violations in failing to disclose her identity as required under § 110(b)(1) and 110(c) (1), as tripled pursuant to §110(l)(1) for a total of \$18,000, in addition to \$3,000 for failing to furnish copies of the bankruptcy documents to the Debtor as required under §110(d)). (Note: the Reply indicates that the UST will not pursue an additional \$3,000 in fines requested by the Motion for executing documents on behalf of the Debtor unless the Court determines that an evidentiary hearing is appropriate).

By her Opposition, Cooper disputes that she is a bankruptcy petition preparer (a "BPP"). Cooper asserts that her assistance was limited to filing the bankruptcy petition ("walking in his paperwork") on behalf of Hee Chang Choi (the Debtor's husband). (Opposition at ¶ 5). Cooper further asserts that she never met the Debtor and instead that she was asked to assist the Debtor's husband with obtaining a loan modification (*Id.* at ¶¶2-3). Cooper disputes the allegation that she received any money either from the Debtor or from the Debtor's husband (*Id.* at ¶ F) and instead repeatedly asserts that she was only assisting the Debtor's husband on the request of

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CONT...

Jina Soo Choi

Chapter 7

an unidentified third party who had been helping the Debtor's husband with a "Free and Clear" program. (Cooper Declaration).

In *In re Reynoso*, the Ninth Circuit provided examples of cases in which a party has been properly deemed a bankruptcy petition preparer. As the Ninth Circuit explained,

It goes without saying that the customer must provide data to the preparer, and the customer's role in printing or otherwise reproducing the forms before filing does not alter the role of the preparer. Moreover, § 110 does not require that bankruptcy petition preparers have in-person interactions with their customers. *Cf. Ferm v. U.S. Trustee (In re Crowe)*, 243 B.R. 43, 49-50 (9th Cir. BAP 2000) (holding that the author of an instructional book on bankruptcy petitions who guaranteed buyers of the book that he would complete their forms for free if they were unable to do so themselves was, in fact, presenting himself as a bankruptcy petition preparer as defined by § 110(a)(1)), *aff'd*, 246 F.3d 673 (9th Cir.2000) (unpublished table decision); *In re Doser*, 281 B.R. 292, 303-04 (Bankr.D.Idaho 2002) (reasoning that a franchisor who receives information that was solicited in a face-to-face interaction between the franchisee and the customer and uses that information to prepare bankruptcy documents, but never meets with the customer directly, is a bankruptcy petition preparer), *aff'd*, 412 F.3d 1056.

In re Reynoso, 477 F.3d 1117, 1123–24 (9th Cir. 2007).

The Cooper Opposition and supporting declaration are vague as to the details of how or why Cooper was engaged to work with the Debtor's husband. Cooper repeatedly makes reference to a third party that was a point of contact between the Debtor's husband and her. However, this third party is never identified. Additionally, Cooper indicates she was only helping the alleged third party but disputes that she ever received money in connection with her assistance and disputes that she did anything other than "walk in" the petition documents to the Court. Cooper's assertions, however, are not credible. There is no indication of the nature of Cooper's relationship with the alleged third party and no detail as to why she would assist the Debtor's husband or the alleged third party agent without any compensation. The Choi

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CONT... **Jina Soo Choi**

Chapter 7

Declaration provided by the UST makes reference to a third party who the Debtor asserted was a patient of the Debtor's husband. The Debtor's declaration asserts that the patient referred her husband to Cooper for the purpose of negotiating a loan modification. (Mot. at Exh. 1, Choi Decl. ¶7). Cooper correctly points out that the information regarding the third party/patient is hearsay. However, the remainder of the Choi declaration unequivocally identifies Cooper, and only Cooper, as the point of contact for all communications regarding the filing of the bankruptcy for the Debtor. (*Id.* at ¶¶8-19).

As to the remaining allegations of the Motion, Cooper by her Opposition has specifically denied all of the allegations of the Motion, including that she executed the petition documents for the Debtor. In an effort to controvert the allegation that she did not disclose her identity, Cooper notes that she was asked for a copy of her driver's license when filing the petition and provided it. Cooper's willingness to provide her Driver's license to the clerk when filing the petition, however, does not overcome her failure to provide specific identifying information on the petition itself as required pursuant to § 110, such as an address and social security number. Thus, assuming the Court finds that Cooper is a BPP within the meaning of the statute, the Court is inclined to GRANT the Motion pursuant to the reduced figure requested by the UST in its Reply.

TENTATIVE RULING

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jina Soo Choi

Represented By
Nicholas S Nassif

Movant(s):

United States Trustee (RS)

Represented By
Mohammad Tehrani

Trustee(s):

Howard B Grobstein (TR)

Pro Se

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CONT... Jina Soo Choi Chapter 7

6:16-21078 ALPINE INDUSTRIES, LLC Chapter 7

#10.00 Motion to Dismiss Chapter 7 Case: Decl of Michael Kiralla

EH__

Docket 17

Tentative Ruling:

04/26/2017

BACKGROUND

On December 20, 2016, Alpine Industries LLC ("Debtor") filed a petition for chapter 7 relief. Robert Whitmore is the duly appointed chapter 7 trustee ("Trustee"). The bankruptcy petition is supported by an electronic filing declaration signed by the Debtor's prior counsel, Laleh Ensafi ("Ensafi") and also purportedly by the Debtor's principal, Michael Kiralla ("Kiralla"). (Docket No. 2).

On March 22, 2017, the Debtor filed a substitution, terminating the representation of Ensafi. On March 28, 2017, the Debtor filed a Motion to Dismiss its chapter 7 case ("Motion"). The Motion appears to have been properly served on the Trustee and all creditors. No opposition has been filed.

The Motion asserts as its primary basis for dismissal that (1) Kiralla was not fully informed of how the bankruptcy would affect the Debtor by Ensafi and (2) that the signature used to file the bankruptcy petition was not Kiralla's.

The electronic filing declaration certifies the accuracy of documents being filed by an attorney and certified an authorized signatory's permission to have the document filed by an attorney. Here, the allegations that form the basis for the dismissal can only be controverted by Ensafi. Notwithstanding, the Motion was not served on Ensafi.

Based on the foregoing the Court will CONTINUE the hearing to May 31, 2017, at 11:00 a.m. for service on Ensafi.

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CONT... ALPINE INDUSTRIES, LLC Chapter 7

APPEARANCES WAIVED. Movant to file/serve the Motion on Ensafi, and to file/serve notice of the continuance on all parties.

Party Information

Debtor(s):

ALPINE INDUSTRIES, LLC

Represented By
Michael E Clark

Movant(s):

ALPINE INDUSTRIES, LLC

Represented By
Michael E Clark

Trustee(s):

Robert Whitmore (TR)

Pro Se

6:16-18842 Roderick E Clignett Chapter 7

#11.00 CONT Motion for an Order Pursuant to 11 U.S.C.§303(i) for damages, punitive damages costs and Attorneys fees

From: 3/29/17

EH__

Docket 24

*** VACATED *** REASON: HEARD ON 4/12/17 AT 11:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roderick E Clignett

Represented By
Robert M Aronson

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CONT... Roderick E Clignett

Chapter 7

Movant(s):

Roderick E Clignett

Represented By

Robert M Aronson

Robert M Aronson

Robert M Aronson

6:16-20003 Pamula Raye St Dennis

Chapter 7

#12.00 CONT Motion to Convert Case From Chapter 7 to 13

From: 3/8/17, 4/5/17

EH__

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pamula Raye St Dennis

Represented By

Cynthia A Dunning

Movant(s):

Pamula Raye St Dennis

Represented By

Cynthia A Dunning

Trustee(s):

Charles W Daff (TR)

Represented By

Lynda T Bui

Melissa Davis Lowe

Elyza P Eshaghi

Brandon J Iskander

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6:16-20964 Antonio Carlos Saldate

Chapter 7

#13.00 Motion to Dismiss Chapter 7 Bankruptcy Case

EH _____

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antonio Carlos Saldate Pro Se

Movant(s):

Antonio Carlos Saldate Pro Se

Trustee(s):

Robert Whitmore (TR) Pro Se

6:10-46000 Jerold R Meints

Chapter 7

#14.00 CONT Status Conference re District Court's order re fees
(HOLDING DATE)

From: 2/8/17, 3/8/17, 4/5/17

EH__

Docket 125

Tentative Ruling:

04/05/2017

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CONT... **Jerold R Meints** **Chapter 7**

The Status Conference is CONTINUED to April 26, 2017, at 11:00 a.m. as a holding date. The Court shall issue an amended order regarding fees ordered against Tunold and Kints in its September 29, 2014, order. Appearances are excused for the April 26, 2017, Status Conference.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Jerold R Meints

Represented By
Gene E O'Brien
Harold M Hewell

Trustee(s):

Helen R. Frazer (TR)

Pro Se

6:14-18549 **Matthew Joseph Pautz and Alice Louise Pautz** **Chapter 7**

#14.10 Application for Appearance and Examination re Enforcement of Judgment re Judgment Debtor - Matthew Pautz

EH _____

Docket 151

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Matthew Joseph Pautz

Represented By
Stephen D Brittain

Joint Debtor(s):

Alice Louise Pautz

Represented By

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CONT... **Matthew Joseph Pautz and Alice Louise Pautz**
Stephen D Brittain

Chapter 7

Movant(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Samuel J Romero

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Samuel J Romero

6:14-18549 Matthew Joseph Pautz and Alice Louise Pautz

Chapter 7

#14.20 Application for Appearance and Examination re Enforcement of Judgment re Judgment Debtor - Alice Pautz

EH _____

Docket 152

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Matthew Joseph Pautz

Represented By
Stephen D Brittain

Joint Debtor(s):

Alice Louise Pautz

Represented By
Stephen D Brittain

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CONT... Matthew Joseph Pautz and Alice Louise Pautz

Chapter 7

Movant(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Samuel J Romero

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Samuel J Romero

**United States Bankruptcy Court
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Wednesday, April 26, 2017

Hearing Room 303

2:00 PM

6:11-47448 Allen Brandon Eley

Chapter 7

Adv#: 6:16-01086 Eley v. National Collegiate Student Loan

#15.00 CONT Motion For Summary Judgment

From: 2/8/17

Also # 16 - 17

EH__

Docket 10

Tentative Ruling:

04/26/2017

The hearing on the Motion was continued from February 8, 2017. At the prior hearing, the Court continued the hearing for supplemental briefing on the issue of whether a claim that a state law statute of limitations defense may serve as a basis for the Debtor's determination of dischargeability complaint under § 523(a)(8).

The Debtor, in support of his Complaint, primarily relies on *Banks v. Gill Distribution Centers, Inc.*, 263 F.3d 862, 868 (9th Cir. 2001), for his argument that on a complaint for determination of dischargeability of a student loan the court must first consider the establishment of the debt (which is subject to the applicable state statute of limitations) and second, make a determination as to the nature of the debt.

The Debtor's analysis of *Banks v. Gill* is unpersuasive. In that case, the Ninth Circuit was asked to examine the holding of the Tenth Circuit of Appeals in *In re McKendry*, 40 F.3d 331, 334 (10th Cir. 1994). The Tenth Circuit framed the question as follows: "where a debt has been reduced to judgment in state court, can the bankruptcy court be barred by a state statute of limitations from considering the underlying nature of the debt in determining whether that debt is dischargeable." In *McKendry*, a creditor had obtained a deficiency judgment against the debtor and the issue before the trial court was whether the creditor could attempt to prove that the debt established by the deficiency judgment was nondischargeable due to fraud. *Id.* at 334.

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CONT... Allen Brandon Eley

Chapter 7

In considering the issue, the *McKendry Court*, quoted *In re Moran*, 152 B.R. 493 (Bankr.S.D.Oh.1993), and followed its reasoning:

[t]here is a fundamental flaw in the debtor's position in that it fails to recognize the distinction between a suit brought under state law to enforce state created rights and a suit filed in bankruptcy court to determine dischargeability issues under § 523(a) of the Bankruptcy Code. In bankruptcy court there are two separate and distinct causes of action:

One cause of action is on the debt and the other cause of action is on the dischargeability of that debt, a cause of action that arises solely by virtue of the Bankruptcy Code and its discharge provisions.

Until the debtor filed his petition for relief under the Bankruptcy Code, the plaintiffs obviously had no cause of action under § 523(a)(4).... The only relevant question with respect to Ohio's statute of limitations is whether the plaintiffs sought to *enforce* their "*debt*" against the debtor within the period prescribed by the statute of limitations. The debtor does not dispute that the plaintiffs did so. In the instant adversary proceeding, the nature of the alleged debt, i.e., whether the debt is of a type determined by Congress to be nondischargeable, is to be decided by this court. *Moran*, 152 B.R. at 495. (emphasis in the original).

In re McKendry, 40 F.3d 331, 336–37 (10th Cir. 1994)(internal citations omitted). *Moran*, *McKendry* and *Banks* all involve situations in which the plaintiffs were creditors of the estate seeking to enforce a prepetition claim (reduced to judgment or not) against a debtor. In order to enforce such claims, this line of cases holds that the creditor must first (1) establish that a debt exists (and such determination requires an evaluation of whether such a claim could exist under state law, including with reference to the applicable statute of limitations); and (2) must then establish that the debt is nondischargeable under the Bankruptcy Code.

Here, the Debtor is the plaintiff and is not seeking to enforce a debt but is

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CONT...

Allen Brandon Eley

Chapter 7

instead seeking a determination that the debt is dischargeable based on the fact that the statute of limitations has run under state law. However, the debtor's argument belies the holding of *McKendry of Banks* because assuming, arguendo, that there is no debt due to the operation of the statute of limitations under state law, the Court need not reach the issue of whether the debt is nondischargeable under the Bankruptcy Code. In other words, by asserting that there is no debt because the California statute of limitations has lapsed, the Debtor's Complaint has addressed only the threshold issue in *Banks* – whether a debt exists under state law. The issue of dischargeability, however, requires (1) that there be a debt; (2) that it be a student loan debt; and (3) that the debtor demonstrate that payment would of the debt would constitute an undue hardship. Based on the foregoing, given that the Complaint is premised upon there being no debt, the Court cannot reach the issue of dischargeability.

04/26/2017

APPEARANCES REQUIRED

02/08/2017

BACKGROUND

On December 13, 2011, Allen Brandon Eley (the "Debtor") filed his petition for chapter 7 relief. The Debtor received a discharge of his debts on March 26, 2012. The Debtor's case was subsequently closed on December 17, 2013.

On March 30, 2016, the Debtor filed a complaint against National Collegiate Student Loan Trust ("Defendant"). He subsequently amended his complaint on July 5, 2016. The Debtor's amended complaint asserts that he is seeking a determination of dischargeability against the Defendant on the basis that the Statute of Limitations has lapsed and on this basis asserts his debt should be discharged (the "Complaint").

On December 23, 2016, Defendant filed a Motion for Summary Judgment (the "Motion") seeking a determination (1) that this Court lacks jurisdiction over the Debtor's claim; and (2) that having failed to assert "undue hardship" the Plaintiff's Complaint has failed to assert a claim that would render its claim dischargeable.

On January 18, 2017, the Debtor filed his Opposition to the Motion

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CONT... Allen Brandon Eley

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("Opposition"). The Debtor primarily argues that the Motion is premature and that the Court should permit discovery to continue because the Debtor should be afforded an opportunity to demonstrate that the Defendant's claim is not enforceable.

DISCUSSION

I. SUMMARY JUDGMENT

The Motion is brought pursuant to FRBP 7056 (incorporating Fed R. Civ. P. 56). FRBP 7056. Under Fed R. Civ. P. 56, courts must view the evidence in the light most favorable to the non-moving party and "determine whether there are any genuine issues of material fact." *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir.1996). A material fact is one that, "under the governing substantive law ... could affect the outcome of the case." *Thrifty Oil Co. v. Bank of America Nat'l Trust & Savings Ass'n*, 322 F.3d 1039, 1046 (9th Cir.2003) (citing *761 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. The party moving for summary judgment must initially identify "those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party meets its burden, the non-moving party must "set out specific facts showing a genuine issue for trial." Fed R. Civ. P. 56(e)(2).

If a moving party fails to carry its initial burden of production, the nonmoving party has no obligation to produce anything, even if the nonmoving party would have the ultimate burden of persuasion at trial. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 160 (1970). In such a case, the nonmoving party may defeat the motion for summary judgment without producing anything. *See High Tech Gays v. Defense Indus. Sec. Clearance Office*, 895 F.2d 563, 574 (9th Cir.1990). If, however, a moving party carries its burden of production, the nonmoving party must produce evidence to support its claim or defense (denials in the pleadings are insufficient). *See Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir.1991). If the nonmoving party fails to produce enough evidence to create a genuine issue of material fact, the moving party

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CONT...

Allen Brandon Eley

Chapter 7

wins the motion for summary judgment. *See Celotex* at 322 ("Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."). But if the nonmoving party produces enough evidence to create a genuine issue of material fact, the nonmoving party defeats the motion. *See id.*

Dischargeability of Student Loans

It is well-settled law that student loan debts are presumptively nondischargeable in bankruptcy pursuant to § 523(a)(8). *Tenn. Student Assistance Corp. v. Hood*, 541 U.S. 440, 450 (2004) (holding that "unless the debtor affirmatively secures a hardship determination, the discharge order will not include a student loan debt").

The Court finds persuasive the Defendant's citation to *In re Gustafson*, 111 B.R. 282, 285 (9th Cir. BAP 1990), rev'd on other grounds, 934 F.2d 216 (9th Cir. 1991) which states the standards for a determination of dischargeability of student loans:

Section 523(a)(8) of the Bankruptcy Code provides that educational loan debts are nondischargeable unless the loan 1) first became due prior to five years before filing, or 2) not excepting the loan from discharge would cause undue hardship to the debtor. The effect of this section is to make student loans presumptively nondischargeable until a complaint is brought to determine dischargeability based on one of the two exceptions. Section 523(a)(8) is self-executing and the burden is on the debtor to bring a complaint to determine dischargeability of the debt. *Buford v. Higher Educ. Assistance Foundation*, 85 B.R. 579 (D.Kan.1988). The lender is not required to file a complaint to determine dischargeability. S.Rep. No. 989, 95th Cong., 2d Sess. 79 (1978), U.S.Code Cong. & Admin.News 1978, p. 5787.

Id. The Debtor's Complaint does not state a claim under § 523(a)(8), which is the only basis for a determination of dischargeability of a student loan debt. Here, there is no dispute that the debt at issue is a student loan debt and the Debtor's only claim for non-dischargeability is based on statute of limitation grounds. For these reasons, the

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Court finds that no material issues of fact remain to be determined which would prevent entry of summary judgment for the Defendant. Moreover, the Defendant has demonstrated that, as a matter of law, that the Debtor has not stated a claim for which relief is available in this Court.

Instead, the Court notes that the Debtor's statute of limitations defense is a matter of state law and this ruling is without prejudice to the Debtor's ability to assert his defense in the State Court Action brought by the Defendant and currently pending in the Superior Court of the County of Riverside.

Based on the foregoing, the Court declines to reach the issue of jurisdiction.

TENTATIVE RULING

The Court is inclined to GRANT the Motion on the bases that there are no material issues of fact to be determined at trial and that the Complaint fails to state a claim for dischargeability of the debt at issue. The case shall be dismissed

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Allen Brandon Eley	Pro Se
--------------------	--------

Defendant(s):

National Collegiate Student Loan	Represented By Damian P Richard
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Movant(s):

National Collegiate Student Loan	Represented By Damian P Richard
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Plaintiff(s):

Allen Brandon Eley	Represented By David Brian Lally
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CONT... Allen Brandon Eley

Chapter 7

Trustee(s):

Steven M Speier (TR)

Pro Se

6:11-47448 Allen Brandon Eley

Chapter 7

Adv#: 6:16-01086 Eley v. National Collegate Student Loan

#16.00 CONT Motion to Compel Further Discovery Responses from Defendant to Plaintiff's First Request For Production of Documents and First Set of Interrogatories, and Request For Attorney's Fees, Costs and Sanctions
HOLDING DATE

From: 2/8/17

Also # 15 - 17

EH__

Docket 15

***** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 PM.**

Tentative Ruling:

02/08/2017

Given the Court's intention to GRANT defendant's Motion for Summary Judgment and dismiss the adversary proceeding, this Motion shall go off calendar as moot.

Party Information

Debtor(s):

Allen Brandon Eley

Pro Se

Defendant(s):

National Collegate Student Loan

Represented By
Damian P Richard

Movant(s):

Allen Brandon Eley

Represented By

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CONT... Allen Brandon Eley

Chapter 7

David Brian Lally

Plaintiff(s):

Allen Brandon Eley

Represented By
David Brian Lally

Trustee(s):

Steven M Speier (TR)

Pro Se

6:11-47448 Allen Brandon Eley

Chapter 7

Adv#: 6:16-01086 Eley v. National Collegiate Student Loan

#17.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01086. Complaint by Allen Brandon Eley against National Collegiate Student Loan . (Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan))

From: 6/1/16, 8/3/16, 10/5/16, 2/1/17, 2/8/17

Also # 15 - 16

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allen Brandon Eley

Pro Se

Defendant(s):

National Collegiate Student Loan

Represented By
Damian P Richard

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CONT... Allen Brandon Eley

Chapter 7

Plaintiff(s):

Allen Brandon Eley

Represented By
David Brian Lally

Trustee(s):

Steven M Speier (TR)

Pro Se

6:13-17565 Bertrand Tenke Kengni

Chapter 7

Adv#: 6:13-01288 Romeo et al v. Kengni

#18.00 CONT Status Conference Re: Complaint; false pretenses, false representation, actual fraud, 68 Dischargeability - 523(a)(6), willful and malicious injury, 65 Dischargeability - other, 41 Objection / revocation of discharge - 727(c),(d),(e)

From: 10/9/13,12/11/13, 12/18/13, 3/12/14, 4/9/14, 5/21/14, 7/2/14, 10/22/14, 6/10/15, 8/26/15, 9/2/15, 11/18/15, 2/3/16, 4/6/16, 6/29/16, 8/31/16, 12/14/16, 2/8/17

EH___

Docket 1

***** VACATED *** REASON: ORDER DISMISSING ADVERSARY
FILED 2/16/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bertrand Tenke Kengni

Represented By
Terrence Fantauzzi

Defendant(s):

Bertrand Tenke Kengni

Represented By
Terrence Fantauzzi
Heidi H Romeo

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CONT... **Bertrand Tenke Kengni**

Chapter 7

Plaintiff(s):

Law Offices of Heidi Romeo &

Represented By
Heidi H Romeo

Heidi H Romeo

Represented By
Heidi H Romeo

Trustee(s):

Helen R. Frazer (TR)

Pro Se

6:13-17565 Bertrand Tenke Kengni

Chapter 7

Adv#: 6:15-01223 Frazer (TR) v. Kengni

#19.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01223. Complaint by Helen R. Frazer (TR) against Bertrand Tenke Kengni, Carisa Kengni. (Charge To Estate - \$350.00). Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h)))

From: 10/7/15, 2/3/16, 4/6/16, 6/29/16, 8/31/16, 12/14/16, 2/8/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bertrand Tenke Kengni

Represented By
Terrence Fantauzzi

Defendant(s):

Carisa Kengni

Represented By
Kamola L Gray

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CONT... **Bertrand Tenke Kengni**

Chapter 7

Plaintiff(s):

Helen R. Frazer (TR) Pro Se

Trustee(s):

Helen R. Frazer (TR) Pro Se

6:13-27610 Baleine LP

Chapter 7

Adv#: 6:15-01314 Simons v. The Law Office of Don C. Burns et al

#20.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01314. Complaint by Larry D. Simons against The Law Office of Don C. Burns, Don C. Burns. (Charge To Estate \$350). (with Adversary Coversheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 2/10/16, 5/11/16, 6/8/16, 6/22/16, 10/19/16, 12/14/16, 2/15/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/28/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Baleine LP Represented By
Summer M Shaw

Defendant(s):

Don C. Burns Pro Se
The Law Office of Don C. Burns Pro Se

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CONT... Baleine LP

Chapter 7

Plaintiff(s):

Larry D. Simons

Represented By
Carmela Pagay

Trustee(s):

Larry D Simons (TR)

Represented By
Carmela Pagay
Todd A Frealy

6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#21.00 Motion to Dismiss the Amended Counter-Claims Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure

Also #'s 22 - 24

EH__

Docket 44

Tentative Ruling:

04/26/2017

The Court, having reviewed the Trustee's Unilateral Status Report indicating that he has agreed to a continuance of the hearing, the Trustee may appear telephonically.

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

David A. Wood

Pro Se

Joanne Fraleigh

Represented By

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CONT... Nabeel Slaieh

Chapter 7

Nabeel Naiem Slaieh

George A Saba

Represented By
George A Saba

Movant(s):

Mathew Grimshaw

Pro Se

Larry D Simons (TR)

Represented By
George A Saba
Matthew Grimshaw

D. Edward Hays

Pro Se

Larry D Simons (TR)

Pro Se

Marshack Hays LLP

Pro Se

D. Edward Hays

Represented By
George A Saba
Matthew Grimshaw

Larry D Simons (TR)

Pro Se

Marshack Hays LLP

Represented By
George A Saba
Matthew Grimshaw

Mathew Grimshaw

Represented By
George A Saba
Matthew Grimshaw

David Wood

Represented By
George A Saba
Matthew Grimshaw

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

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CONT... Nabeel Slaieh

Chapter 7

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#22.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01224. Complaint by Larry D. Simons (TR) against Nabeel Naiem Slaieh, Joanne Fraleigh. (Charge To Estate \$350.00). Complaint for Avoidance and Recovery of Unauthorized Post-Petition Transfer (Attachments: # 1 Part 2 of 2 # 2 Adversary Proceeding Cover Sheet) Nature of Suit: (14 (Recovery of money/property - other))

From: 11/2/16, 2/1/17, 2/15/17

Also #'s 21 - 24

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

David A. Wood

Pro Se

Joanne Fraleigh

Represented By
George A Saba

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CONT... Nabeel Slaieh

Chapter 7

Nabeel Naiem Slaieh

Represented By
George A Saba

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#23.00 Status Conference RE: [39] Counterclaim by Nabeel Naiem Slaieh against Mathew Grimshaw, D. Edward Hays, Marshack Hays LLP, Larry D Simons (TR), David Wood

Also # 21 - 24

EH__

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

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CONT... Nabeel Slaieh

Chapter 7

Defendant(s):

David A. Wood

Pro Se

Joanne Fraleigh

Represented By
George A Saba

Nabeel Naiem Slaieh

Represented By
George A Saba

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#24.00 CONT Status Conference RE: Cross Complaint [19] Answer to Complaint by Joanne Fraleigh, Nabeel Slaieh, and, Crossclaim by Joanne Fraleigh, Nabeel Naiem Slaieh against D. Edward Hays, Marshack Hays LLP, David Wood, Mathew Grimshaw, Larry D Simons
(Voluntarily Dismissed as to Joanne Fraleigh only)

From: 2/1/17, 2/15/17

Also #'s 21 - 23

EH__

Docket 19

*** VACATED *** REASON: ORDER ENTERED 3/6/2017

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**CONT... Nabeel Slaieh
Tentative Ruling:**

Chapter 7

- NONE LISTED -

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

David A. Wood

Pro Se

Joanne Fraleigh

Represented By
George A Saba

Nabeel Naiem Slaieh

Represented By
George A Saba

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

6:14-17350 Dean L. Springer, Sr.

Chapter 7

Adv#: 6:16-01141 Simons v. G7 Investments, LLC et al

#25.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01141. Complaint by Larry D Simons against G7 Investments, LLC, Gary M Annunziata, Jean M. Annunziata, Annunziata Family Trust (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(02 (Other (e.g. other actions that would

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CONT...

Dean L. Springer, Sr.

Chapter 7

have been brought in state court if unrelated to bankruptcy

From: 9/7/16, 10/19/16, 2/8/17, 4/10/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr.

Pro Se

Defendant(s):

Jean M. Annunziata

Represented By
Jason D Strabo

Annunziata Family Trust

Represented By
Jason D Strabo

G7 Investments, LLC

Represented By
Jason D Strabo

Gary M Annunziata

Represented By
Jason D Strabo

Joint Debtor(s):

Tami Jo Springer

Pro Se

Plaintiff(s):

Larry D Simons

Represented By
Sarah Cate Hays
D Edward Hays

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CONT... Dean L. Springer, Sr.

Chapter 7

Trustee(s):

Larry D Simons (TR)

Represented By

Richard A Marshack

Sarah Cate Hays

D Edward Hays

6:14-17350 Dean L. Springer, Sr.

Chapter 7

Adv#: 6:16-01142 Simons v. Desert Gastroenterology Consultants, AMC et al

#26.00 CONT Status Conference RE: [21] Amended Complaint by Sarah Cate Hays on behalf of Larry D Simons against Gary M. Annunziata, Desert Gastroenterology Consultants, AMC 401k Profit Sharing Plan, Desert Gastroenterology Consultants, AMC. (RE: related document(s)1 Adversary case 6:16-ap-01142. Complaint by Larry D Simons against Desert Gastroenterology Consultants, AMC. (Charge To Estate)\$350.00. (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))

From: 9/7/16, 10/19/16, 2/8/17, 4/10/17

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Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr.

Pro Se

Defendant(s):

Desert Gastroenterology

Represented By

Jason D Strabo

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CONT... Dean L. Springer, Sr.

Chapter 7

Gary M. Annunziata

Represented By
Jason D Strabo

Desert Gastroenterology

Represented By
Jason D Strabo

Joint Debtor(s):

Tami Jo Springer

Pro Se

Plaintiff(s):

Larry D Simons

Represented By
Sarah Cate Hays
D Edward Hays

Trustee(s):

Larry D Simons (TR)

Represented By
Richard A Marshack
Sarah Cate Hays
D Edward Hays

6:14-17350 Dean L. Springer, Sr.

Chapter 7

Adv#: 6:16-01143 Simons v. Caffery Financial, inc. et al

#27.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01143. Complaint by Larry D Simons against Caffery Financial, inc., Joe G. Caffery, Kim Caffery, Caffery Family Trust (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))

From: 9/7/16, 12/7/16, 1/11/17, 2/15/17

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Docket 1

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CONT... Dean L. Springer, Sr.
- NONE LISTED -

Chapter 7

Party Information

Debtor(s):

Dean L. Springer Sr. Pro Se

Defendant(s):

Kim Caffery Pro Se

Caffery Family Trust Pro Se

Caffery Financial, inc. Pro Se

Joe G. Caffery Pro Se

Joint Debtor(s):

Tami Jo Springer Pro Se

Plaintiff(s):

Larry D Simons Represented By
Sarah Cate Hays
D Edward Hays

Trustee(s):

Larry D Simons (TR) Represented By
Richard A Marshack
Sarah Cate Hays
D Edward Hays

6:14-24056 William Stephen Bonnheim
Adv#: 6:15-01127 Wedbush Securities Inc v. Bonnheim

Chapter 7

#28.00 CONT Pre-Trial Conference RE: [1] Adversary case 6:15-ap-01127. Complaint by Wedbush Securities Inc against William Stephan Bonnheim. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny))

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CONT...

William Stephen Bonnheim

Chapter 7

From: 7/27/16, 9/7/16, 11/16/16, 1/1/17, 2/8/17

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Docket 1

*** VACATED *** REASON: CONTINUED TO 5/10/17 AT 2:00 PM

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Stephen Bonnheim

Represented By
Robert L Firth

Defendant(s):

William Stephan Bonnheim

Represented By
Robert L Firth

Plaintiff(s):

Wedbush Securities Inc

Represented By
John L Erikson Jr

Trustee(s):

Steven M Speier (TR)

Pro Se

6:16-12574 William Dillingham Smyth

Chapter 7

Adv#: 6:16-01212 Pringle v. Smyth

#29.00 CONT Status Conference Re: Complaint by John P. Pringle against Elena Smyth. Nature of Suit: 13 - Recovery of money/property - 548 fraudulent transfer

From: 11/2/16, 1/11/17

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CONT...

William Dillingham Smyth

Chapter 7

Docket 1

*** VACATED *** REASON: CONTINUED TO 6/21/17 AT 2:00 PM

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Dillingham Smyth

Represented By
Kevin M Cortright

Defendant(s):

Elena Smyth

Represented By
C Scott Rudibaugh

Plaintiff(s):

John P. Pringle

Represented By
Melissa Davis Lowe
Rika Kido

Trustee(s):

John P Pringle (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe

6:16-14050 Ricardo Horacio Quintero

Chapter 7

Adv#: 6:17-01039 United States Trustee for the Central District of v. Quintero et al

#30.00 Status Conference RE: [1] Adversary case 6:17-ap-01039. Complaint by United States Trustee for the Central District of California, Region 16 against Ricardo Horacio Quintero, Araceli Cantu. (Fee Not Required). with adversary cover sheet
Nature of Suit: (41 - Objection / revocation of discharge - 727(c),(d),(e)

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CONT... Ricardo Horacio Quintero

Chapter 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricardo Horacio Quintero Pro Se

Defendant(s):

Araceli Cantu Pro Se

Ricardo Horacio Quintero Pro Se

Joint Debtor(s):

Araceli Cantu Pro Se

Plaintiff(s):

United States Trustee for the Central Represented By
Everett L Green

Trustee(s):

Howard B Grobstein (TR) Pro Se

6:16-17745 Patricia Glenn Apostolakis

Chapter 7

Adv#: 6:16-01286 Apostolakis v. Neiderhiser

#31.00 Motion to Vacate Default

ALSO #'s 32 - 33

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CONT... Patricia Glenn Apostolakis

Chapter 7

04/26/2017

BACKGROUND

On August 29, 2016, Patricia Glenn Apostolakis ("Debtor or "Plaintiff") filed her petition for chapter 7 relief. On December 1, 2016, the Debtor filed a complaint against Patricia Neiderhiser ("Defendant") to avoid preferential and/or fraudulent transfers ("Complaint"). The Complaint generally seeks to avoid a judgment lien on improved real property known as 10132 Phelan Road, in Oak Hills, California (the "Property").

On December 6, 2016, the Plaintiff filed her executed service of summons (Docket No. 3) indicating that the summons and complaint was served on Defendant on December 6, 2016. The Summons provided Defendant with a deadline of January 4, 2017, to file her answer.

An amended complaint was filed by the Plaintiff on December 29, 2016 (the "FAC").

On February 2, 2017, the Plaintiff re-filed a copy of her executed service of summons (Docket No. 5).

On February 6, 2017, the Plaintiff filed a request for entry of default as to the Defendant which was entered by the Clerk on February 7, 2017.

On March 22, 2017, the Plaintiff filed her Motion for Default Judgment against the Defendant (the "MDJ").

On April 11, 2017, the Defendant filed a Motion to vacate (or "set aside") the default ("MSA") and to expedite a hearing on her motion to vacate. The Court entered an order setting the MSA to be heard concurrent with the Motion for Default Judgment.

On April 20, 2017, the Plaintiff filed opposition to the MSA ("Opposition").

DISCUSSION

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, April 26, 2017

Hearing Room 303

2:00 PM

CONT...

Patricia Glenn Apostolakis

Chapter 7

Federal Rule of Civil Procedure 55(c) (made applicable by Fed. R. Bankr.P. 7055) provides that "[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)". FRBP 7055.

To determine "good cause" under this Rule, a court must consider three factors:

- (1) whether the party seeking to set aside the default engaged in culpable conduct that led to the default;
- (2) whether it had no meritorious defense; or
- (3) whether reopening the default judgment would prejudice the other party.

United States v. Signed Personal Check No. 730 of Yubran S. Mesle, 615 F.3d 1085, 1091 (9th Cir. 2010) (citing *Franchise Holding II v. Huntington Rests. Group, Inc.*, 375 F.3d 922, 925–26 (9th Cir. 2004), cert. denied 544 U.S. 949 (2005)). This test is disjunctive, such that a finding that any one of the factors is true is sufficient for the court to refuse to set aside the default. It is the same test used to determine whether a default judgment should be set aside under Civil Rule 60(b). *Id.* While a court has the discretion to refuse to set aside a default judgment for excusable neglect under Fed.R.Civ.P. 60(b) if it finds one of the enumerated factors present, it is not mandatory that it do so. *See Brandt v. Am. Bankers Ins. Co. of Fla.*, 653 F.3d 1108 (9th Cir.2011). "Crucially, however, 'judgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits.' " *Signed Personal Check No. 730* at 1091 (citing *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir.1984)).

Defendant asserts that it appears the Complaint was served on her at her old address in Boron, California and as such she did not receive it. (Neiderhiser Decl. ¶3). The Defendant concedes that she received the FAC (but not the amended summons) at her address in Colorado on or about January 3 or 4 of 2017. The Defendant further asserts that the FAC did not indicate the time limit for the filing of a response. (*Id.* at ¶ 4). In response, the Plaintiff asserts that the Defendant has failed to corroborate her assertion that she has moved. Plaintiff suggests that the Defendant may own both properties and is simply asserting that she has moved in an effort to excuse her "sleeping on her rights" and lack of diligence. Here, Defendant may have engaged in

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CONT... Patricia Glenn Apostolakis

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"culpable conduct" regarding her address, and it does not appear Defendant has established a meritorious defense. However, any delay has been minor. Nevertheless, the Court is cognizant of the fact that as a direct result of Defendant's three month delay in seeking to set aside the default despite having been aware of the Complaint since January 3 or 4, Plaintiff has unnecessarily expended fees in preparation of the Motion for Default Judgment, and such fees would otherwise prejudice Movant.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the MSA conditioned upon the Defendant's payment of Plaintiff's fees and costs associated with the filing of the Motion for Default Judgment.

The Court is further inclined to DENY the Motion for Default Judgment as moot based on the Court's granting of the MSA.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Patricia Glenn Apostolakis

Represented By
Todd L Turoci

Defendant(s):

Patricia Neiderhiser

Represented By
Phillip Myer

Movant(s):

Patricia Neiderhiser

Represented By
Phillip Myer

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CONT... Patricia Glenn Apostolakis

Chapter 7

Plaintiff(s):

Patricia Apostolakis

Represented By
Todd L Turoci

Trustee(s):

Karl T Anderson (TR)

Pro Se

6:16-17745 Patricia Glenn Apostolakis

Chapter 7

Adv#: 6:16-01286 Apostolakis v. Neiderhiser

#32.00 Motion for Default Judgment

Also # 31 - 33

EH _____

Docket 13

Tentative Ruling:

04/26/2017

The Court is inclined to DENY the Motion for Default Judgment as moot based on the Court's granting of the MSA.

Party Information

Debtor(s):

Patricia Glenn Apostolakis

Represented By
Todd L Turoci

Defendant(s):

Patricia Neiderhiser

Represented By
Phillip Myer

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CONT... Patricia Glenn Apostolakis

Chapter 7

Movant(s):

Patricia Apostolakis

Represented By
Todd L Turoci

Plaintiff(s):

Patricia Apostolakis

Represented By
Todd L Turoci

Trustee(s):

Karl T Anderson (TR)

Pro Se

6:16-17745 Patricia Glenn Apostolakis

Chapter 7

Adv#: 6:16-01286 Apostolakis v. Neiderhiser

#33.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01286. Complaint by Patricia Apostolakis against Patricia Neiderhiser. (Fee Not Required). (Attachments: # 1 Adv. Proc. Cover Sheet # 2 Summons) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer))

From: 2/8/17, 3/29/17

Also #'s 31 - 32

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Glenn Apostolakis

Represented By
Todd L Turoci

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CONT... Patricia Glenn Apostolakis

Chapter 7

Defendant(s):

Patricia Neiderhiser

Represented By
Phillip Myer

Plaintiff(s):

Patricia Apostolakis

Represented By
Todd L Turoci

Trustee(s):

Karl T Anderson (TR)

Pro Se

6:16-18917 Jiangmin Li

Chapter 7

Adv#: 6:17-01004 Qiu v. Li

#34.00 CONT Motion to Dismiss Adversary Proceeding

From: 3/8/17

Also # 35

EH__

Docket 7

*** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 PM

Tentative Ruling:

3/8/17

BACKGROUND

On October 5, 2016, Jiangmin Li ("Defendant") filed a Chapter 7 voluntary petition.

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CONT... Jiangmin Li

Chapter 7

On January 9, 2017, Dongxia Qiu ("Plaintiff") filed an adversary complaint against Defendant, seeking a non-dischargeability finding. On February 8, 2017, Defendant filed a motion to dismiss for failure to state a claim. On February 22, 2017, Plaintiff filed her opposition. On March 3, 2017, Defendant filed a late reply.

The adversary complaint arises from state court litigation between the two parties. Plaintiff's state court complaint included ten causes of action: (1) intentional misrepresentation; (2) negligent misrepresentation; (3) rescission – fraud; (4) rescission – mistake; (5) conversion; (6) breach of fiduciary duty; (7) imposition of constructive trust; (8) accounting; (9) unjust enrichment; and (10) breach of written contract. The Court ruled in favor of Plaintiff on her fourth (rescission – mistake) and sixth (breach of fiduciary duty) causes of action. The Court ruled against Plaintiff on the first (intentional misrepresentation) and third (rescission – fraud) causes of action. The Court deemed the second, fifth, seventh, eighth, ninth, and ten causes of action to have been forfeited due to Plaintiff's failure to adequately brief the issues.

DISCUSSION

Fed. R. Civ. P. Rule 12(b)(6) states:

(b) Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. Rule 12(d) states:

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Jiangmin Li

Chapter 7

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

Here, Defendant has submitted a request for judicial notice, so the Court must initially determine whether to grant or deny the request. Pursuant to Fed. R. Civ. P. Rule 12(b)(6), granting a request for judicial notice may cause the Court to convert the motion to a motion for summary judgment. *See, e.g., Jacobson v. AEG Capital Corp.*, 50 F.3d 1493, 1496 (9th Cir. 1995) ("In considering AEG's motion to dismiss, the district court took judicial notice of the extensive records and transcripts from the prior bankruptcy proceedings. We therefore review the district court's dismissal as an order granting summary judgment."). The Court may "consider unattached evidence on which the complaint 'necessarily relies' if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the document," without converting the motion to a motion for summary judgment. *See U.S. v. Corinthian Colls.*, 655 F.3d 984, 999 (9th Cir. 2011).

Here, the unattached evidence contained in Defendant's request for judicial notice satisfies the above test. Plaintiff necessarily relied on the documents. In fact, the Plaintiff appears to have erroneously omitted the documents when filing the complaint, since the complaint purports to attach the three documents and references the documents throughout. Therefore, the Court will grant the request for judicial notice, and evaluate the motion as a motion to dismiss for failure to state a claim.

The standard for a Rule 12(b)(6) motion to dismiss is the following:

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. Factual allegations must be enough to raise a right to relief above

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Chapter 7

the speculative level, on the assumption that all the allegations in the complaint are true. . . . The need at the pleading stage for allegations plausibly suggesting agreement reflects the threshold requirement of Rule 8(a)(2) that the "plain statement" possesses enough heft to "show that the pleader is entitled to relief.

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-57 (2007) (quotations and parentheses omitted).

Here, Plaintiff states two causes of action, both relating to non-dischargeability, under 11 U.S.C. § 523(a)(4) and (6). Defendant alleges that both causes of action are barred by collateral estoppel.¹ The state court statement of decision found denied Plaintiff's claims for intentional fraud and for rescission based on fraud. That decision granted Plaintiff's claims for unilateral mistake of fact and breach of fiduciary duty. While Plaintiff's complaint contained other causes of action, the state court deemed those causes of action to be forfeited by Plaintiff's failure to brief the issues.

"Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." *Allen v. McCurry*, 449 U.S. 90, 94 (1980). Collateral estoppel applies in dischargeability proceedings. *See Grogan v. Garner*, 498 U.S. 279, 284 n.11 (1991). And it is appropriate to consider a collateral estoppel argument at the motion to dismiss stage. *See, e.g., Conopco, Inc. v. Roll Int't*, 231 F.3d 82, 86 (2nd Cir. 2000).

In California, "collateral estoppel bars relitigation when (1) the issue decided in the prior action is identical to the issue presented in the second action; (2) there was a final judgment on the merits; and (3) the party against whom estoppel is asserted was a party . . . to the prior adjudication." *Garrett v. City & Cnty. of San Francisco*, 818 F.2d 1515, 1520 (9th Cir. 1987).

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Chapter 7

11 U.S.C. § 523(a)(4) states:

- (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt –
- (4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny

Plaintiff's complaint raises three disjunctive claims: (1) defalcation in a fiduciary capacity, (2) embezzlement, and (3) larceny. "To prevail in a § 523(a)(4) action, the creditor must establish that (1) a fiduciary relationship existed and (2) a defalcation occurred." *Erde v. Moriarty*, 2013 WL 12132069 at *6 (C.D. Cal. 2013). Defalcation under § 523(a)(4) was recently defined broadly and, somewhat vaguely, by the Supreme Court:

Thus, where the conduct at issue does not involve bad faith, moral turpitude, or other immoral conduct, the term requires an intentional wrong. We include as intentional not only conduct that the fiduciary knows is improper but also reckless conduct of the kind set forth in the Model Penal Code. Where actual knowledge of wrongdoing is lacking, we consider conduct as equivalent if the fiduciary "consciously disregards" "a substantial and unjustifiable risk" that his conduct will turn out to violate a fiduciary duty. That risk "must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a *gross deviation* from the standard of conduct that a law-abiding person would observe in the actor's situation.

Bullock v. BankChampaign, N.A., 133 S. Ct. 1754, 1759-1760 (2013).

Embezzlement is the use of funds lawfully entrusted for an unauthorized purpose. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991). Larceny is the "felonious taking of

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CONT...

Jiangmin Li

Chapter 7

another's personal property with intent to convert it or deprive the owner of the same." *In re Ormsby*, 591 F.3d 1199, 1205 (9th Cir. 2010). "Larceny is distinguished from embezzlement in that the original taking of the property was unlawful." *In re Montes*, 177 B.R. 325, 331 (Bankr C.D. Cal. 1994).

In ruling against Plaintiff's causes of action for fraud and rescission based on fraud, the state court found that, regarding the certain misrepresentations that were the basis of Plaintiff's claim, "Plaintiff did not rely on those misrepresentations in entering into the April agreement." In both cases, the state court found that Plaintiff failed to demonstrate that it relied on the alleged misrepresentations of Defendant in entering into the contract. This finding of the state court does not constitute a finding that Defendant did not commit defalcation. As the Supreme Court quotation above highlights, the issues are substantially different.

The issues are also substantially different with regard to Plaintiff's § 523(a)(6) claim. 11 U.S.C. § 523(a)(6) states:

- (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt –
 - (6) for willful and malicious injury by the debtor to another entity or to the property of another entity

Again, the state court's finding that Plaintiff failed to demonstrate reliance on alleged misrepresentations of Defendant when entering into the contract at issue does not constitute a finding that Defendant did not commit a willful and malicious injury. The state court's findings underlining its ruling in Plaintiff's favor for rescission based on unilateral mistake of fact and breach of fiduciary duty could plausibly be considered to state a claim pursuant to § 523(a)(4) and (6).

TENTATIVE RULING

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CONT... Jiangmin Li

Chapter 7

The Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jiangmin Li

Represented By
Sam X J Wu

Defendant(s):

Jiangmin Li

Represented By
Sam X J Wu

Movant(s):

Jiangmin Li

Represented By
Sam X J Wu

Plaintiff(s):

Dongxia Qiu

Represented By
John Y Kim

Trustee(s):

Todd A. Frealy (TR)

Pro Se

6:16-18917 Jiangmin Li

Chapter 7

Adv#: 6:17-01004 Qiu v. Li

#35.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01004. Complaint by Dongxia Qiu against Jiangmin Li. fraud as fiduciary, embezzlement, larceny)), (68 (Dischargeability - 523(a)(6), willful and malicious injury))

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2:00 PM

CONT...

Jiangmin Li
From: 3/8/17

Chapter 7

Also # 34

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jiangmin Li

Represented By
Sam X J Wu

Defendant(s):

Jiangmin Li

Represented By
Sam X J Wu

Plaintiff(s):

Dongxia Qiu

Represented By
John Y Kim

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

4:00 PM

6:17-13368 Brian William Bokon

Chapter 13

#36.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1260 5th Street, Norco, CA 92860

MOVANT: COUNTY OF RIVERSIDE

EH _____

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian William Bokon

Pro Se

Movant(s):

Riverside County Treasurer-Tax

Represented By
Ronak Patel

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 27, 2017

Hearing Room 303

9:30 AM

6:16-20109 Gilberto Herrera and Monica Herrera

Chapter 13

#1.00 Evidentiary Hearing re Motion to Avoid JUNIOR LIEN with Trinity Financial Servies LLC

FROM: 3/23/17

EH__

Docket 16

***** VACATED *** REASON: TO BE HEARD AT 12:30 PM PER
ORDER ENTERED 4/26/17**

Tentative Ruling:

Hearing Date: 01/26/2017

Summary of the Motion:

Notice: Ok

Opposition: Yes

Address: 1732 San Key Court, San Jacinto, CA 92582

First trust deed: \$\$386,163 with Fannie Mae

Second trust deed (to be avoided): \$149,509 with Trinity Financial Services LLC

Fair market value: \$337,362

TENTATIVE

- (1) Trinity requests additional time to obtain an appraisal of the Property; and
- (2) Trinity asserts that the loan payoff statement provided by the Debtors as Exhibit "A" which sets forth the amount of the first mortgage is hearsay and alternatively, that it indicates there may have been a loan modification with the potential for loan forgiveness as to a portion of the loan principal

First, the Court is inclined to grant Trinity's request for additional time. Separately, the Court overrules Trinity's hearsay objection but finds that Trinity's request for the Debtors to indicate whether any portion of the loan principal has been forgiven is reasonable.

APPEARANCES REQUIRED.

Party Information

**United States Bankruptcy Court
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9:30 AM

CONT... Gilberto Herrera and Monica Herrera

Chapter 13

Debtor(s):

Gilberto Herrera

Represented By
Todd L Turoci

Joint Debtor(s):

Monica Herrera

Represented By
Todd L Turoci

Movant(s):

Monica Herrera

Represented By
Todd L Turoci

Gilberto Herrera

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:14-13885 Essam R. Hanna

Chapter 13

#2.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

EH__

Docket 35

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Essam R. Hanna

Represented By
Julie J Villalobos

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:15-13354 Jeffrey Michael Berger and Debra Lynn Berger

Chapter 13

#3.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan

EH _____

Docket 37

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey Michael Berger

Represented By
Jenny L Doling

Joint Debtor(s):

Debra Lynn Berger

Represented By
Jenny L Doling

Movant(s):

Debra Lynn Berger

Represented By
Jenny L Doling
Jenny L Doling

Jeffrey Michael Berger

Represented By
Jenny L Doling
Jenny L Doling
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:15-14501 Vonetta M Mays

Chapter 13

#4.00 Motion RE: Objection to Claim Number 5 by Claimant Persolve LLC

Also # 5

EH__

Docket 117

Tentative Ruling:

4/27/17

Background:

On May 4, 2015, Vonetta Mays ("Debtor") filed a Chapter 13 voluntary petition. On August 8, 2015, Debtor's Chapter 13 plan was confirmed. On December 28, 2015, Persolve LLC ("Creditor") filed a claim in the amount of \$8,181.55 ("Claim 5"). On March 24, 2017, Debtor filed an objection to Claim 4. The Court notes that Debtor appears to not have used the mandatory forms.

The basis for Debtor's objection is that Debtor received a discharge on January 23, 2014. Claim 4 arises from debt incurred between 2008 and 2010. While Creditor recorded a lien on Debtor's home on May 17, 2013, the Court avoided that lien on January 30, 2017.

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CONT... Vonetta M Mays

Chapter 13

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. See *In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. See *Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

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CONT... Vonetta M Mays

Chapter 13

Debtor's previous discharge extinguished personal liability in relation to Claim 4. *See* 11 U.S.C. §§ 524(a)(1) and 727(b). Creditor's lien was avoided pursuant to court order on January 30, 2017. Therefore, the claim is void.

Tentative Ruling

The Court is inclined to SUSTAIN the objection.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Vonetta M Mays

Represented By
Christopher J Langley

Movant(s):

Vonetta M Mays

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:15-14501 Vonetta M Mays

Chapter 13

#5.00 Motion for Order Dismissing Chapter 13 Proceeding Due to Infeasibility of Plan in that the Plan will not Pay out at its present Plan Payment Amount

Also # 4

EH__

Docket 116

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vonetta M Mays

Represented By
Christopher J Langley

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:16-11303 Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

#6.00 CONT Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

From: 3/23/17

Also # 7 - 9

EH__

Docket 61

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Robert Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joseph Robert Byrne

Represented By
Jenny L Doling
Jenny L Doling
Summer M Shaw
Summer M Shaw

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

CONT... Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:16-11303 Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

#7.00 Motion for Authority to Incur Debt [personal property]

Also # 6 - 9

EH _____

Docket 60

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Robert Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joseph Robert Byrne

Represented By
Jenny L Doling
Jenny L Doling
Summer M Shaw
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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CONT... Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

**United States Bankruptcy Court
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12:30 PM

6:16-11303 Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

#8.00 CONT Trustee's Motion to Dismiss Case

From: 3/23/17

Also # 6 - 9

EH__

Docket 56

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Robert Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:16-11303 Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

#9.00 Trustee's Motion to Dismiss Case

Also # 6 - 8

EH__

Docket 65

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Robert Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:16-14457 Milorad Mileusnic and Sonja Mileusnic

Chapter 13

#10.00 CONT Motion RE: Objection to Claim Number 2 by Claimant Internal Revenue Service

From: 8/4/16, 9/29/16, 11/3/16, 12/15/16

Also # 11

EH__

Docket 23

***** VACATED *** REASON: DISMISSAL OF OBJECTION FILED
3/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Milorad Mileusnic

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Sonja Mileusnic

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Sonja Mileusnic

Represented By
Jenny L Doling
Summer M Shaw

Milorad Mileusnic

Represented By
Jenny L Doling
Jenny L Doling
Summer M Shaw

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CONT...

Milorad Mileusnic and Sonja Mileusnic

Summer M Shaw

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 27, 2017

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12:30 PM

6:16-14457 Milorad Mileusnic and Sonja Mileusnic

Chapter 13

#11.00 CONT Confirmation of Chapter 13 Plan

From: 6/23/16, 8/4/16, 9/29/16, 11/3/16, 12/27/16

Also # 10

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Milorad Mileusnic

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Sonja Mileusnic

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:16-17342 Natasha Marie Kiehl and Phillip Nathan Kiehl

Chapter 13

#12.00 CONT Confirmation of Chapter 13 Plan

From: 9/29/16, 11/3/16, 12/15/16, 2/16/17, 3/30/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Natasha Marie Kiehl

Represented By
Bill J Parks

Joint Debtor(s):

Phillip Nathan Kiehl

Represented By
Bill J Parks

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:16-18248 Juan Jose Franco

Chapter 13

#13.00 CONT Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2010 Chevrolet Suburban 1500 LS Sport Utility
4D Vin:1GNUCHE03AR146168

MOVANT: LOGIX FEDERAL CREDIT UNION

From: 1/31/17, 3/23/17

EH__

Docket 31

Tentative Ruling:

01/31/2017

Service: Proper

Opposition: Yes

The Motion indicates that the basis for relief is a lack of adequate protection and the declining value of the vehicle. However, no evidence is provided to support either basis for relief. Separately, based on the evidence provided and the attached declaration, it appears that Movant actually intended to seek relief based on a postpetition or post-confirmation default.

The original confirmed chapter 13 plan entered on December 8, 2016, made no mention of the 2010 Chevrolet Suburban or Movant. However, the January 11, 2017, Amended Order Confirming Chapter 13 Plan (entered after the Movant had already filed its Motion for Relief from Stay) specifically indicated that Debtor would make direct payments to Movant. The Debtor concedes that there was an error on his part in the drafting of the plan. However, it is not clear from the Debtor's response why the December payment which would have come due on December 28, 2016, was not made, although it appears implied that the December payment was included in the plan payment. Movant has established cause under § 362(d)(1) to lift the stay based on

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CONT... **Juan Jose Franco**
post-confirmation default.

Chapter 13

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Juan Jose Franco

Represented By
Paul Y Lee

Movant(s):

Logix Federal Credit Union

Represented By
Lazaro E Fernandez

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:16-18820 Chase D Chung

Chapter 13

#14.00 Objection to Claim Number 7 by Claimant Wells Fargo Bank, N.A., as Trustee for Bear Stearns Asset Backed Securities 1 Trust 2004-BO1 and Ocwen Loan Servicing, LLC

Also # 15

EH__

Docket 29

Tentative Ruling:

4/27/17

Background:

On October 1, 2016, Chase Chung ("Debtor") filed a Chapter 13 voluntary petition. On November 21, 2016, Debtor's Chapter 13 plan was confirmed.

On February 14, 2017, Ocwen Loan Servicing ("Ocwen") filed a secured claim in the amount of \$107,123.68 ("Claim 7"), which includes \$52,722.19 in arrears. On March 28, 2017, Debtor filed an objection to Ocwen's secured claim. The Court notes that Debtor failed to use the mandatory claim objection form.

Debtor objects to the claim as late-filed and inaccurate. Nevertheless, Debtor consents to continuing to pay \$20,030 through the plan, representing Debtor's estimate of the arrears at the petition date.

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CONT... Chase D Chung

Chapter 13

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (quoting *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)).

"The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (quoting *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. See *In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (quoting *Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. See *Lundell*, 223 F.3d at 1039; see also *Holm*, 931 F.2d at 623.

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12:30 PM

CONT... Chase D Chung

Chapter 13

Analysis:

Here, the claims bar date was February 1, 2017, and Ocwen did not file Claim 7 until February 14, 2017. Therefore, the claim was filed late.

11 U.S.C. § 502(b)(9) states:

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition and shall allow such claim in such amount, except to the extent that –

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure . . .

There is no indication that the five subsections of § 502(b) are applicable here, and § 726 is not applicable to Chapter 13 proceedings. The Federal Rules of Bankruptcy Procedure also do not provide an exception here. As noted by Debtor, "the Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceedings is 'rigid,' and the bankruptcy court lacks equitable power to extend this deadline after the fact." *In re Barker*, 839 F.3d 1189, 1197 (9th Cir. 2016). While there are limited exceptions relating to the informal proof of claim doctrine, Ocwen has not made any argument that those exceptions apply here.

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CONT... Chase D Chung

Chapter 13

Additionally, the Court deems failure to oppose to constitute consent to the relief requested pursuant to Local Rule 9013-1(h).

Tentative Ruling

The Court is inclined to SUSTAIN the objection.

APPEARANCES WAIVED. Movant required to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Chase D Chung

Represented By
Daniel C Sever

Movant(s):

Chase D Chung

Represented By
Daniel C Sever
Daniel C Sever
Daniel C Sever
Daniel C Sever

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-18820 Chase D Chung

Chapter 13

#15.00 CONT Trustee's Motion to Dismiss Case

From: 4/6/17

Also # 14

EH__

Docket 24

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chase D Chung

Represented By
Daniel C Sever

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Hearing Room 303

12:30 PM

6:16-19429 Patricia Morales

Chapter 13

#16.00 Motion to vacate dismissal

EH _____

Docket 51

Tentative Ruling:

4/27/17

BACKGROUND

On October 24, 2016, Patricia Morales ("Debtor") filed a Chapter 13 voluntary petition. On January 24, 2017, Debtor's Chapter 13 plan was confirmed.

On April 3, 2017, Trustee's motion to dismiss was granted after no opposition was properly filed. On April 6, 2017, Debtor filed a motion to vacate dismissal. Trustee filed his disapproval on April 10, 2017. On April 21, 2017, Debtor filed a late reply that was not served

Trustee's comments are based on both technical and substantive issues. Trustee states that both service and notice are inadequate. Substantively, Trustee states that Debtor's assertion that she was current with plan payments is incorrect, and further states Debtor has never been current with plan payments. Furthermore, Trustee asserts that Debtor failed to provide tax returns.

DISCUSSION

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CONT... Patricia Morales

Chapter 13

As a preliminary matter, the Court notes that Debtor's motion contains numerous factual and legal deficiencies. The heading of the motion improperly cites a string of provisions, some of which are inapplicable to the case at issue. The motion itself contains a recitation of the factual background and a brief recitation of the string of legal provisions cited, but is devoid of any meaningful application of the law to the facts of this case.

Debtor states that her counsel notified her that a motion to dismiss was filed, but that she did not respond because she thought she had made all plan payments. This assertion is contradicted by the case's docket. Debtor did, in fact, file a late opposition, prior to the entry of the order, which contained a declaration by Debtor. The matter was not placed on calendar, however, because the opposition contained hearing information and Debtor did not respond to the notice to filer.

The second factual assertion made by Debtor, that she was current with her payments, is denied by Trustee, who states that her payments bounced, and that she appeared to have issued a "stop payment" on the funds. While Debtor has filed additional evidence of tendered payment in her reply, the Court cannot ascertain whether the funds were sent, or received, by Trustee. More importantly, however, there is no description of how those payments are relevant to the analysis for a Rule 60(b) motion.

Debtor's reply also states that Debtor has fixed the proof of service and notice issues. That assertion is not supported by a review of the Court's docket. There is no amended proof of service or notice docketed, and Debtor's reply does not itself include a proof of service.

The approach taken by Debtor and her counsel is concerning. While there may be merit in bringing a §60(b) motion based on the technical error in Debtor's opposition, that is not the path that was chosen. Instead, Debtor has asserted facts which are incompatible with, or, at the very least, misrepresent the record.

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CONT... Patricia Morales

Chapter 13

Additionally, Debtor's legal argument is unclear. Debtor appears to primarily rely on Fed. R. Bankr. P. Rule 9023, which deals with amendments of judgments, and states that it would be a manifest injustice for the order to stand. This legal provision is not applicable in this situation. *See Harrington v. City of Chicago*, 433 F.3d 542, 546 (7th Cir. 2006) (in distinguishing between Fed. R. Civ. P. Rule 59(e) and Rule 60(b), the Court stated "Rule 59(e) does not provide a vehicle for a party to undo its own procedural failures").

Finally, Debtor mechanically cites Fed. R. Civ. P. Rule 60(b)(6) and § 105, and appears to argue that it would be manifestly unjust to subject Debtor to collection law suits and garnishments based on the facts of the case.

The Court finds Debtor's account of the facts of the case to lack credibility. Of the two factual assertions made by Debtor, one is contradicted by the docket and the other is denied by the Trustee. Because the motion contains no legal analysis and misrepresents facts, the Court will deny the motion.

TENTATIVE RULING

The Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Patricia Morales

Represented By
Michael C Maddux

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CONT... Patricia Morales

Chapter 13

Movant(s):

Patricia Morales

Represented By
Michael C Maddux

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Hearing Room 303

12:30 PM

6:16-20109 Gilberto Herrera and Monica Herrera

Chapter 13

#16.10 Evidentiary Hearing re Motion to Avoid JUNIOR LIEN with Trinity Financial Servies LLC

FROM: 3/23/17

Also # 17

EH__

Docket 16

Tentative Ruling:

Hearing Date: 01/26/2017

Summary of the Motion:

Notice: Ok

Opposition: Yes

Address: 1732 San Key Court, San Jacinto, CA 92582

First trust deed: \$\$386,163 with Fannie Mae

Second trust deed (to be avoided): \$149,509 with Trinity Financial Services LLC

Fair market value: \$337,362

TENTATIVE

- (1) Trinity requests additional time to obtain an appraisal of the Property; and
- (2) Trinity asserts that the loan payoff statement provided by the Debtors as Exhibit "A" which sets forth the amount of the first mortgage is hearsay and alternatively, that it indicates there may have been a loan modification with the potential for loan forgiveness as to a portion of the loan principal

First, the Court is inclined to grant Trinity's request for additional time. Separately, the Court overrules Trinity's hearsay objection but finds that Trinity's request for the Debtors to indicate whether any portion of the loan principal has been forgiven is reasonable.

APPEARANCES REQUIRED.

Party Information

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CONT... Gilberto Herrera and Monica Herrera

Chapter 13

Debtor(s):

Gilberto Herrera

Represented By
Todd L Turoci

Joint Debtor(s):

Monica Herrera

Represented By
Todd L Turoci

Movant(s):

Monica Herrera

Represented By
Todd L Turoci

Gilberto Herrera

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:16-20109 Gilberto Herrera and Monica Herrera

Chapter 13

#17.00 CONT Confirmation of Chapter 13 Plan

From: 1/5/17, 1/26/17, 3/23/17

Also # 16.10

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gilberto Herrera

Represented By
Todd L Turoci

Joint Debtor(s):

Monica Herrera

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:16-21234 Frank A Horzen and Barbara A Horzen

Chapter 13

#18.00 Motion for Appointment of Debtor Barbara Horzen as Next Friend of Debtor Frank Horzen Pursuant to Fed R BankR. P. 10041

From: 3/30/17

Also # 19

EH__

Docket 26

Tentative Ruling:

03/30/2017

BACKGROUND

On December 28, 2016, Frank and Barbara Horzen (collectively, "Debtors") filed their petition for chapter 13 relief. Rod Danielson is the duly appointed chapter 13 trustee ("Trustee").

On March 9, 2017, the Debtors filed a Motion for Appointment of Mrs. Horzen as the "Next Friend" of Debtor Frank Horzen ("Motion"). The Motion is based on the Debtors' assertion that Mr. Horzen lacks the capacity to make legal decisions and seeks authority for Mrs. Horzen to "execute all legal decisions" related to the bankruptcy, including permitting Mrs. Horzen to execute documents on behalf of Mr. Horzen. Notice was provided to all creditors and to the Trustee and United States Trustee. No opposition has been filed.

DISCUSSION

Fed. R. Bankr.P. 1004.1 allows "a representative, including a general guardian, committee, conservator, or similar fiduciary," to file a voluntary petition on behalf of an incompetent person.

The rule further provides that

[a]n infant or incompetent person who does not have a duly appointed representative may file a voluntary petition by next friend or guardian

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CONT...

Frank A Horzen and Barbara A Horzen

Chapter 13

ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.

Rule 1004.1 is patterned after Fed.R.Civ.P. 17(c), which applies to adversary proceedings pursuant to Fed. R. Bankr.P. 7017. That rule provides that an incompetent person may sue "by a next friend or by a guardian ad litem" if the incompetent person does not have a duly appointed representative, and provides that "[t]he court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action."

Cases interpreting Rule 17(c) look to the law of the state in which the subject is domiciled and follow the state's incompetency laws." *In re Burchell*, 2014 WL 1304635, at *1 (Bankr. N.D. Ohio 2014)(internal citations omitted). This court shall thus look to the California Probate Code's § 811 which outlines the possible bases for a determination that a person is of unsound mind or lacks capacity to make a decision or do a certain act, including for example, incapacity to contract or to execute wills or trusts.

In support of the Motion, the Debtors have attached the Declaration of Barbara Horzen in which she details the numerous diagnoses of Mr. Horzen made since June 2016 indicating his dementia diagnosis. Particularly persuasive is the correspondence attached as Exhibit E to the Motion, and authenticated by the declaration of Barbara Horzen, which indicates the opinion of Mr. Horzen's Doctor, Sophie K. Chwa, and states that Mr. Horzen is incompetent to make decisions "including those of legal consequence." Notwithstanding this diagnosis, § 811(d) provides that "the mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act." Instead, California law requires evidence of specific deficits and a link between the identified deficits and the acts that the allegedly incompetent person would otherwise have capacity to perform. The types of deficiencies are outlined in § 811 as follows:

- (1) Alertness and attention, including, but not limited to, the following:
 - (A) Level of arousal or consciousness.
 - (B) Orientation to time, place, person, and situation.
 - (C) Ability to attend and concentrate.

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CONT... Frank A Horzen and Barbara A Horzen

Chapter 13

- (2) Information processing, including, but not limited to, the following:
 - (A) Short- and long-term memory, including immediate recall.
 - (B) Ability to understand or communicate with others, either verbally or otherwise.
 - (C) Recognition of familiar objects and familiar persons.
 - (D) Ability to understand and appreciate quantities.
 - (E) Ability to reason using abstract concepts.
 - (F) Ability to plan, organize, and carry out actions in one's own rational self-interest.
 - (G) Ability to reason logically.
- (3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:
 - (A) Severely disorganized thinking.
 - (B) Hallucinations.
 - (C) Delusions.
 - (D) Uncontrollable, repetitive, or intrusive thoughts.
- (4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to CONTINUE the hearing on the Motion for the Debtors to either provide (1) supplemental evidence establishing that the Mr. Horzen is unable to undertake the actions required in connection with the Debtors' duties in a chapter 13 case; or (2) evidence that Counsel has explained to Mr. Horzen that a bankruptcy is being filed in his name and that Mr. Horzen has consented to Mrs. Horzen's appointment as his representative.

As an aside, the Court notes that as the power of attorney provided is of general application and does not specifically permit actions to be taken by Mrs. Horzen in the event of a bankruptcy, the power of attorney does not necessarily provide Mrs. Horzen with the requisite authority.

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CONT... Frank A Horzen and Barbara A Horzen

Chapter 13

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Frank A Horzen

Represented By
Paul Y Lee

Joint Debtor(s):

Barbara A Horzen

Represented By
Paul Y Lee

Movant(s):

Barbara A Horzen

Represented By
Paul Y Lee

Frank A Horzen

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:16-21234 Frank A Horzen and Barbara A Horzen

Chapter 13

#19.00 CONT Confirmation of Chapter 13 Plan

From: 2/2/17, 2/16/17, 3/30/17

Also # 18

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank A Horzen

Represented By
Paul Y Lee

Joint Debtor(s):

Barbara A Horzen

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-10179 Michael Anthony Rivera

Chapter 13

**#20.00 CONT Motion to Avoid Lien JUNIOR LIEN with Internal Revenue Service
HOLDING DATE**

From: 2/16/17, 3/23/17

Also # 21 - 22

EH__

Docket 18

Tentative Ruling:

Proposed Tentative:

Hearing Date: 3/23/17

Summary of the Motion:

Notice: Proper

Opposition: Yes

Address: 636 Wellesley Dr., Corona, CA 92879

First trust deed: \$ 793,014 (mortgage statement dated 10/19/15)

Second (tax lien) (to be avoided): \$ 10,528 (notice of tax lien dated 4/12/16)

Fair market value (as of 10/13/16 per appraisal & appraiser declaration):
\$410,000

On April 7, 2014, the IRS filed a notice of federal tax lien with the Los Angeles County Recorder's Office, and, on April 11, 2014, filed a notice of federal tax lien with the Riverside County Recorder's Office. This lien related to unpaid taxes for the periods 2006-2008 and 2012. On April 13, 2016, the IRS filed another notice of federal tax lien with the Riverside County Recorder's Office relating to unpaid taxes for the tax years 2011 and 2013.

On January 9, 201, Debtor filed a Chapter 13 voluntary petition. On January 24, 2017, Debtor filed a lien avoidance motion pursuant to 11 U.S.C. § 506(d) seeking to avoid

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the lien recorded in April 2016. After stipulating to a continuance, the IRS filed its opposition on March 9, 2017.

The IRS raises three arguments in its opposition. First, the IRS questions the legitimacy of Debtor's property valuation, noting that Zillow identifies the value of the real property as \$555,661. Second, the IRS argues that § 506(d) only applies to invalid claims. The IRS raises a third argument that is unclear and does not appear to be relevant to this hearing.

Regarding its first argument, the IRS asserts that "[t]he Debtor may not seek to avoid a lien under Section 506(d) without first obtaining a valuation of the secured claim under Section 506(a)." The IRS cites *Blendheim* for its proposition, however, *Blendheim* does not support the proposition. *Blendheim* does not discuss valuation of at all. Additionally, Debtor has obtained a valuation of the subject real property. While the IRS has indicated it believes the valuation is low, the IRS has not provided any counter-evidence, nor did the IRS attach the Zillow valuation to its opposition. Furthermore, the valuation hinted at by the IRS is still nearly \$250,000 lower than the value of the first trust deed. The Court will not entirely disregard Debtor's valuation under these circumstances.

Regarding its second argument, the IRS seems to argue, in an indirect manner, that the Supreme Court's reasoning in *Dewsnup* is applicable in the Chapter 13 context. While there is some language in *Blendheim* to support the IRS's contention, *Blendheim* did not resolve the issue. See *In re Blendheim*, 803 F.3d 477, 489-90 (9th Cir. 2015) ("*Dewsnup*'s holding clarifies that § 506(d)'s avoidance mechanism turns on claim allowance."). First of all, *Blendheim*'s holding does not distinguish between Chapter 7 and Chapter 13 cases: the conclusion that the lien could be avoided in *Blendheim* was a result of *Dewsnup*'s consideration of when a lien could be avoided in a Chapter 7 case. Additionally, the authority for the Court's quoted language above is a Supreme Court case dealing with a Chapter 7 proceeding, *Bank of America, N.A. v. Caulkett*, 135 S. Ct. 1995 (2015). In *Caulkett*, the Supreme Court merely clarified that *Dewsnup*'s holding applied to wholly underwater liens, as well as partly underwater liens. *Id.* at 1998-99. Courts have typically construed *Caulkett* narrowly. See, e.g., *In re Larson*, 544 B.R. 883, 885-86 (Bankr. W.D. Wis. 2016).

While the Supreme Court has settled the question of when § 506(d) can be used in

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Chapter 13

Chapter 7 cases, the analysis in Chapter 13 proceedings is different. This is because 11 U.S.C. § 1322(b)(2) is applicable to Chapter 13 proceedings, and allows a debtor to: "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims." While *Dewsnup* interpreted the meaning of secured claim in § 506(d) to be different than that used in § 506(a), see *Caulkett*, 135 S. Ct. 1995 at 1998, *Dewsnup's* interpretation has not been applied to § 1322(b)(2). See *In re Zimmer*, 313 F.3d 1220, 1223 (9th Cir. 2002) ("The position adopted by a majority of courts is that the antimodification clause does not apply to wholly unsecured homestead liens, but a substantial minority of courts has taken the contrary position"; Ninth Circuit followed the majority approach). Therefore, Chapter 13 debtors can use § 1322(b)(2) to avoid a wholly underwater junior lien on their principal residence.

As noted by the IRS, "[t]he lien strip procedure in a chapter 13 case is a two-step process." *In re Boukatch*, 533 B.R. 292, 295 (B.A.P. 9th Cir. 2015). The two-step process, however, is embodied in the form motion to avoid the lien. And here, while the IRS references Zillow to suggest that Debtor's valuation may not be accurate, the stated valuation referenced by the IRS makes it apparent that no part of the IRS's claim is secured under § 506(a).

TENTATIVE

The Court is inclined to GRANT the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Michael Anthony Rivera

Represented By
Michael A Rivera

Movant(s):

Michael Anthony Rivera

Represented By
Michael A Rivera

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CONT... Michael Anthony Rivera

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-10179 Michael Anthony Rivera

Chapter 13

#21.00 CONT Motion RE: Objection to Claim Number 1 by Claimant IRS

From: 3/23/17

Also # 20 - 22

EH__

Docket 44

***** VACATED *** REASON: OBJECTION WITHDRAWN 4/25/17**

Tentative Ruling:

3/23/17

Background:

On January 9, 2017, Michael Rivera ("Debtor") filed a Chapter 13 voluntary petition. On February 2, 2017, the IRS filed Claim #1 in the amount of \$45,102.99, of which \$29,751.14 was characterized as secured, and \$10,152.79 was characterized as priority. On February 13, 2017, Debtor filed a claim objection. On March 8, 2017, the IRS filed its opposition.

The IRS identifies unpaid income tax for the years 2006-2008, 2011-2013, and 2015-2016. The IRS additionally identifies taxes owing due to Debtor's failure to file Form 940 Employer's Annual Federal Unemployment ("FUTA") for tax years 2011-2017. Furthermore, the IRS identifies taxes owing due to Debtor's failure to file Form 41 Employer's Quarterly Federal Tax Return ("FICA") for 2011(1Q) to 2017 (1Q).

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CONT... Michael Anthony Rivera

Chapter 13

While Debtor concedes liability regarding the federal income taxes owing, Debtor disputes liability for the FUTA and FICA taxes. Specifically, Debtor states that the tax ID number listed on the IRS's proof of claim is not the tax identification number of himself or his corporation, that he was not individually obligated to file any FUTA or FICA taxes, and that his corporation filed the appropriate FUTA or FICA taxes during the time in question.

The IRS responds by indicating that Debtor's law office is referenced with the tax identification number provided, and that this law office is referenced with Debtor's social security number.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden of production shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (B.A.P. 9th Cir. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (quoting *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at

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1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74).

Analysis:

Local Rule 3007-1(c)(1) requires that: "An objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim executed and filed in accordance with FRBP 3001." In the context of tax claims, the Ninth Circuit has stated the following:

A bankruptcy court adjudicating a tax claim by the IRS must apply the burden-of-proof rubric normally applied under tax law. In an action to collect taxes, the government bears the initial burden of proof. That burden is satisfied by the IRS's deficiency determinations and assessments for unpaid taxes, which are presumed correct so long as they are supported by a minimal factual foundation. However, a showing by the taxpayer that a determination is arbitrary, excessive or without foundation shifts the burden of proof back to the IRS. Thus, once the debtor rebuts the presumption, the burden reverts to the IRS to show that its determination was correct.

In re Olshan, 356 F.3d 1078, 1084 (9th Cir. 2004) (quotations and citations omitted); *see also Raleigh v. Ill. Dept. of Revenue*, 530 U.S. 15, 21 (2000) ("[T]he very fact that the burden of proof has often been placed on the taxpayer indicates how critical the burden rule is, and reflects several compelling rationales: the vital interest of the government in acquiring its lifeblood, revenue; the taxpayer's readier access to the

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Chapter 13

relevant information, and the importance of encouraging voluntary compliance by giving taxpayers incentives to self-report and to keep adequate records in case of dispute.").

Rebutting the claim of the IRS requires more than a blanket assertion that the assessment of the IRS is incorrect. *See, e.g., In re Forte*, 234 B.R. 607, 618 (Bankr. E.D.N.Y. 1999) ("The Debtor may not rebut the *prima facie* case merely by stating that the amount of taxes claimed by the Service is not correct; the Debtor must produce some evidence to support that statement."). Here, Debtor has stated that the tax identification number provided by the IRS is incorrect, and that the FICA and FUTA taxes were paid. Consistent with the Supreme Court's *Raleigh* holding, it is Debtor that has ready access to the evidence that supports those points, but he has failed to provide such evidence. In the context of a tax claim, an unadorned assertion that the IRS's assessment relates to the wrong entity does not constitute "facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves," *Lundell*, 223 F.3d at 1039, especially when considering that Debtor has declined to provide documentary support for his assertion.

Tentative Ruling

The Court is inclined to OVERRULE the objection without prejudice.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Michael Anthony Rivera

Represented By
Michael A Rivera

Movant(s):

Michael Anthony Rivera

Represented By
Michael A Rivera

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CONT... Michael Anthony Rivera

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-10179 Michael Anthony Rivera

Chapter 13

#22.00 CONT Confirmation of Chapter 13 Plan

From: 2/16/17, 3/23/17

Also # 20 - 21

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Anthony Rivera

Represented By
Michael A Rivera

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-10681 Kisha Eugena Stegall-Hill

Chapter 13

#23.00 CONT Confirmation of Chapter 13 Plan

From: 3/9/17, 3/23/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kisha Eugena Stegall-Hill

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-10769 Semone Ramone Monroe

Chapter 13

#24.00 Objection to Claim Number 4 by Claimant State of California Franchise Tax Board

Also # 25 - 26

EH__

Docket 15

Tentative Ruling:

Party Information

Debtor(s):

Semone Ramone Monroe

Represented By
Jenny L Doling

Movant(s):

Semone Ramone Monroe

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:17-10769 Semone Ramone Monroe

Chapter 13

#25.00 Objection to Claim Number 5 by Claimant Internal Revenue Service

Also # 24 - 26

EH__

Docket 16

***** VACATED *** REASON: CONTINUED TO 6/22/17 AT 12:30 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Semone Ramone Monroe

Represented By
Jenny L Doling

Movant(s):

Semone Ramone Monroe

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-10769 Semone Ramone Monroe

Chapter 13

#26.00 CONT Confirmation of Chapter 13 Plan

From: 3/9/17, 3/23/17

Also # 24 - 25

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Semone Ramone Monroe

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-10934 Michael Robert Tucker

Chapter 13

#27.00 CONT Confirmation of Chapter 13 Plan

From: 3/23/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Robert Tucker

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11083 Daniel S Neesan

Chapter 13

#28.00 CONT Confirmation of Chapter 13 Plan

From: 3/30/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel S Neesan

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-11261 Ernie Macias

Chapter 13

#29.00 Motion to Disgorge Compensation Pursuant to 11 U.S.C § 329 and Federal Rule of Bankruptcy Procedure 2017

Case dismissed: 3/13/17

EH__

Docket 16

Tentative Ruling:

4/27/17

BACKGROUND

On February 21, 2017, Ernie Macias ("Debtor") filed a Chapter 13 voluntary petition. The case was dismissed for failure to file information on March 13, 2017.

On March 24, 2017, UST filed a motion to disgorge attorney's fees under 11 U.S.C. § 329. The motion is based on the failure to Debtor's counsel, Alon Darvish ("Counsel") to file the required statement of attorney compensation, which UST asserts that Counsel has regularly failed to do.

DISCUSSION

11 U.S.C. § 329 states:

(a) Any attorney representing a debtor in a case under this title, or in

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CONT...

Ernie Macias

Chapter 13

connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

Fed. R. Bankr. P. Rule 2016(b) states:

Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously discussed.

The Ninth Circuit has stated:

To facilitate the court's policing responsibilities, the Bankruptcy Code and Federal Rules of Bankruptcy Procedure impose several disclosure requirements on attorneys who seek to represent a debtor and who seek to recover fees. . . . Thus, failure to comply with the disclosure rules is a sanctionable violation, even if proper disclosure would have shown that the attorney had not actually violated any Bankruptcy Code provision or any Bankruptcy Rule.

In re Park-Helena Corp., 63 F.3d 877, 880 (9th Cir. 1995). Furthermore, "[T]he disclosure rules are applied literally, even if the results are sometimes harsh. Negligent or inadvertent omissions 'do not vitiate the failure to disclose.'" *Id.* at 881.

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CONT... Ernie Macias

Chapter 13

When an attorney fails to satisfy the disclosure requirements of § 329, the Court is authorized to order disgorgement of fees. *See, e.g., In re Lewis*, 113 F.3d 1040, 1045 (9th Cir. 1997) ("An attorney's failure to obey the disclosure and reporting requirements of the Bankruptcy Code and Rules gives the bankruptcy court the discretion to order disgorgement of attorney's fees. In reaching this conclusion, we do not mean to say that the excessiveness or reasonableness of those fees is irrelevant in all cases; in appropriate circumstances, a bankruptcy court should inquire into these subjects as part of deciding whether and to what extent to order disgorgement."); *see also In re Lee*, 1999 WL 61900 (9th Cir. 1999) ("An attorney's failure to obey the disclosure and reporting requirements of the Bankruptcy Code and Rules gives the bankruptcy court the discretion to order disgorgement of attorney's fees."). Here, UST states that Counsel has repeatedly violated the disclosure requirements in proceedings before this Court and, therefore, disgorgement is appropriate. Under 11 U.S.C. § 105 (a) (2010), the Court is empowered to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Therefore, the Court has the authority to issue an order directing disgorgement of fees and such an order is appropriate in this case.

Furthermore, the failure of Counsel to oppose may be deemed consent pursuant to Local Rule 9013-1(h).

TENTATIVE RULING

The Court is inclined to GRANT the motion, directing Counsel to file a statement of attorney compensation and ordering disgorgement of the entirety of the fees paid by Debtor.

APPEARANCES REQUIRED.

Party Information

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Central District of California
Riverside
Judge Mark Houle, Presiding
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CONT... Ernie Macias

Chapter 13

Debtor(s):

Ernie Macias

Represented By
Alon Darvish

Movant(s):

United States Trustee (RS)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-11279 Teresa Julia Chavez

Chapter 13

#30.00 CONT Confirmation of Chapter 13 Plan

From: 4/6/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa Julia Chavez

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11335 Brian Scott Bunnell and Wendi Lynn Bunnell

Chapter 13

#31.00 CONT Confirmation of Chapter 13 Plan

From: 4/6/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian Scott Bunnell

Represented By
Todd L Turoci

Joint Debtor(s):

Wendi Lynn Bunnell

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11424 Mark David Boughton and Crystal Elaine Boughton

Chapter 13

#32.00 CONT Confirmation of Chapter 13 Plan

From: 4/6/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark David Boughton

Represented By
Nicholas M Wajda

Joint Debtor(s):

Crystal Elaine Boughton

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11511 Carrie Lynne Harmon

Chapter 13

#33.00 CONT Confirmation of Chapter 13 Plan

From: 4/6/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carrie Lynne Harmon

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, April 27, 2017

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12:30 PM

6:17-11538 Michael Ray Sandoval

Chapter 13

#34.00 Motion to Avoid Lien Junior Lien with Specialized Loan Servicing LLC

Also # 35

EH__

Docket 15

Tentative Ruling:

Hearing Date: 4/27/17

Summary of the Motion:

Notice: Proper

Opposition: None

Address: 1244 N. Euclid Ave., Ontario, CA 91762

First trust deed: \$ 339,875.31 (proof of claim)

Second trust deed (to be avoided): \$ 85,352.03 (mortgage statement dated 4/16/15)

Fair market value (per appraisal & appraiser declaration): \$ 335,000

TENTATIVE

The Court is inclined to GRANT the motion upon receipt of a Chapter 13 discharge.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Michael Ray Sandoval

Represented By
Michael E Clark

Movant(s):

Michael Ray Sandoval

Represented By
Michael E Clark

**United States Bankruptcy Court
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CONT... Michael Ray Sandoval

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 27, 2017

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12:30 PM

6:17-11538 Michael Ray Sandoval

Chapter 13

#35.00 CONT Confirmation of Chapter 13 Plan

From: 4/6/17

Also # 34

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Ray Sandoval

Represented By
Michael E Clark

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11702 Lillian Lorraine Glenn

Chapter 13

#36.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 3/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lillian Lorraine Glenn

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
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Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11722 Aaron Wayne Parker

Chapter 13

#37.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 4/19/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Aaron Wayne Parker

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Hearing Room 303

12:30 PM

6:17-11723 Cecilia Carranza

Chapter 13

#38.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 3/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cecilia Carranza

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11726 Deborah Althea Williams

Chapter 13

#39.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Althea Williams

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11753 Susan Elizabeth Duynstee

Chapter 13

#40.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 4/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Susan Elizabeth Duynstee

Represented By
Richard E Chang

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11760 Jose Tinoco and Monica Tinoco

Chapter 13

#41.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Tinoco

Represented By
Juanita V Miller

Joint Debtor(s):

Monica Tinoco

Represented By
Juanita V Miller

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11779 Joe Gomez

Chapter 13

#42.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joe Gomez

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11790 Larry Patrick Egan and Elizabeth Ann Egan

Chapter 13

#43.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Larry Patrick Egan

Represented By
Dana Travis

Joint Debtor(s):

Elizabeth Ann Egan

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11800 Veronica Salinas

Chapter 13

#44.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Veronica Salinas

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11810 Mohamed Adel Kamel

Chapter 13

#45.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 3/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mohamed Adel Kamel

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11831 Gregory Dwight Vit

Chapter 13

#46.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gregory Dwight Vit

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11901 Jose Camacho Payan and Erika Vanessa Payan

Chapter 13

#47.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Camacho Payan

Represented By
Ramiro Flores Munoz

Joint Debtor(s):

Erika Vanessa Payan

Represented By
Ramiro Flores Munoz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11916 Tommy Leroy Weathers, Sr

Chapter 13

#48.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 3/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tommy Leroy Weathers Sr

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11919 Eduardo Aguilera

Chapter 13

#49.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 3/31/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eduardo Aguilera

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11922 Hermilo Saavedra

Chapter 13

#50.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hermilo Saavedra

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11955 Robert James Budzinski

Chapter 13

#51.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert James Budzinski

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11956 Ryan Jess Gomez

Chapter 13

#52.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 4/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ryan Jess Gomez

Represented By
Babak Samini

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11962 Aaron Lawrence

Chapter 13

#53.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 4/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Aaron Lawrence

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11969 Cynthia Ann Sawyer

Chapter 13

#54.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 4/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cynthia Ann Sawyer

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-11986 Michelle J Meredith

Chapter 13

#55.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michelle J Meredith

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12011 Joshua Lawrence Ferguson and Wendy Mae Ferguson

Chapter 13

#56.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joshua Lawrence Ferguson

Represented By
Stephen H Darrow

Joint Debtor(s):

Wendy Mae Ferguson

Represented By
Stephen H Darrow

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12025 Matthew Travis Olson and Lori Lynn Olson

Chapter 13

#57.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Matthew Travis Olson

Represented By
Dana Travis

Joint Debtor(s):

Lori Lynn Olson

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12026 Hari Ram

Chapter 13

#58.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hari Ram

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12050 Caesar A Rodriguez

Chapter 13

#59.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 4/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Caesar A Rodriguez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12101 Sam Venero

Chapter 13

#60.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 4/4/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sam Venero

Represented By
Edward T Weber

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12117 Sarah F Baldwin and Omar Deckard

Chapter 13

#61.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 4/11/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sarah F Baldwin

Pro Se

Joint Debtor(s):

Omar Deckard

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12118 Veronica A Mendoza

Chapter 13

#62.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Veronica A Mendoza

Represented By
Stephen S Smyth
William J Smyth

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12137 Dianne F. Simmons

Chapter 13

#63.00 Motion to Avoid Lien JUNIOR LIEN ON PRINCIPAL RESIDENCE with OCWEN Loan Servicing, LLC, WMC Mortgage Corp

Also # 64

EH__

Docket 22

Tentative Ruling:

Hearing Date: 4/27/17

Summary of the Motion:

Notice: Proper

Opposition: None

Address: 31274 Janelle Ln., Winchester, CA 92596

First trust deed: \$ 404,733.21 (mortgage statement dated 12/19/16)

Second trust deed (to be avoided): \$ 35,003.74 (mortgage statement dated 12/19/16)

Fair market value (per appraisal & appraiser declaration): \$ 340,000 (March 21, 2017)

TENTATIVE

The Court is inclined to GRANT the motion upon receipt of a Chapter 13 discharge.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Dianne F. Simmons

Represented By
Michael Smith

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

CONT... Dianne F. Simmons

Chapter 13

Movant(s):

Dianne F. Simmons

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12137 Dianne F. Simmons

Chapter 13

#64.00 Confirmation of Chapter 13 Plan

Also # 63

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dianne F. Simmons

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12157 Paulo Cesar Machuca

Chapter 13

#65.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paulo Cesar Machuca

Represented By
Scott Kosner

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12214 Roberto Iniguez

Chapter 13

#66.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 4/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roberto Iniguez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12247 Francine Irene McGwire

Chapter 13

#67.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 4/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francine Irene McGwire

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12254 Paul Davis

Chapter 13

#68.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paul Davis

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12255 William J Schaefer and Jennifer L. Schaefer

Chapter 13

#69.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William J Schaefer

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Jennifer L. Schaefer

Represented By
Patricia M Ashcraft

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12307 Darla Bell

Chapter 13

#70.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Darla Bell

Represented By
Andrew Nguyen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12311 Kenneth Davis and Shirley Davis

Chapter 13

#71.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth Davis

Represented By
Andrew Nguyen

Joint Debtor(s):

Shirley Davis

Represented By
Andrew Nguyen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12312 Brett Drake and Lauren Drake

Chapter 13

#72.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brett Drake

Represented By
Andrew Nguyen

Joint Debtor(s):

Lauren Drake

Represented By
Andrew Nguyen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12313 Sergio Santos and Guadalupe Santos

Chapter 13

#73.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sergio Santos

Represented By
Andrew Nguyen

Joint Debtor(s):

Guadalupe Santos

Represented By
Andrew Nguyen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12322 Kyung Sang Lee

Chapter 13

#74.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 4/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kyung Sang Lee

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:17-12365 Joseph Andrew Rodriguez

Chapter 13

#75.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Andrew Rodriguez

Represented By
Hovanes Margarian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:30 PM

6:16-20494 David Paul Zamarripa and Ruth Zamarripa

Chapter 13

#75.10 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Paul Zamarripa

Represented By
Javier H Castillo

Joint Debtor(s):

Ruth Zamarripa

Represented By
Javier H Castillo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:13-11372 Ernest B Galante and Susan D Galante

Chapter 13

#76.00 CONT Trustee's Motion to Dismiss Case

From: 3/23/17

EH__

Docket 116

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ernest B Galante

Represented By
Dale Parham - INACTIVE -
Michael Smith

Joint Debtor(s):

Susan D Galante

Represented By
Dale Parham - INACTIVE -
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:13-17553 Kenneth Vernell Hawkins and Brenda A Hawkins

Chapter 13

#77.00 CONT Trustee's Motion to Dismiss Case

From: 3/23/17

EH__

Docket 97

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth Vernell Hawkins

Represented By
Craig J Beauchamp

Joint Debtor(s):

Brenda A Hawkins

Represented By
Craig J Beauchamp

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:13-28068 Clarence White

Chapter 13

#78.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 137

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Clarence White

Represented By
Steven A Wolvek

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:14-23150 Vivian Munson

Chapter 13

#79.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 151

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vivian Munson

Represented By
Amanda G Billyard
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:14-23388 Jose N Recinos and Patricia Recinos

Chapter 13

#80.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 207

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose N Recinos

Represented By
Michael Smith

Joint Debtor(s):

Patricia Recinos

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:14-24084 Michael Lee Barnes and Belinda Ann Barnes

Chapter 13

#81.00 CONT Trustee's Motion to Dismiss Case

From: 3/2/17, 3/9/17

EH__

Docket 72

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Lee Barnes

Represented By
Todd L Turoci

Joint Debtor(s):

Belinda Ann Barnes

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:15-14224 Sukhdev Singh Chahal

Chapter 13

#82.00 CONT Trustee's Motion to Dismiss Case

From: 3/23/17

EH__

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sukhdev Singh Chahal

Represented By
Marjorie M Johnson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:15-18480 Sean A. Davis

Chapter 13

#83.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 83

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sean A. Davis

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:15-21412 Adrienne J Garcelli and Paul Garcelli

Chapter 13

#84.00 CONT Trustee's Motion to Dismiss Case

From: 3/30/17

EH__

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adrienne J Garcelli

Represented By
Andy C Warshaw

Joint Debtor(s):

Paul Garcelli

Represented By
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-10840 Joanne Casillas

Chapter 13

#85.00 Trustee's Motion to Dismiss Case

EH _____

Docket 42

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joanne Casillas

Represented By
Paul Horn

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-12191 Valicia LaShawn Fennell

Chapter 13

#86.00 CONT Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

From: 3/30/17

EH__

Docket 35

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Valicia LaShawn Fennell

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-12692 Arturo Villagrana

Chapter 13

#87.00 Trustee's Motion to Dismiss Case

EH__

Docket 23

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arturo Villagrana

Represented By
Raj T Wadhvani

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-13719 Darryl R Brown and Kimberly J Brown

Chapter 13

#88.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 41

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Darryl R Brown

Represented By
M Wayne Tucker

Joint Debtor(s):

Kimberly J Brown

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-13720 Margherita Olney

Chapter 7

#89.00 Motion for Order Dismissing Chapter 13 Case (Tax Returns / Refunds)

EH__

Docket 18

***** VACATED *** REASON: CONVERTED TO CHAP 7 ON 4/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Margherita Olney

Represented By
M Wayne Tucker

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-14087 Donald L Maddox and Lisa A Maddox

Chapter 13

#90.00 Trustee's Motion to Dismiss Case

EH__

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald L Maddox

Represented By
Michael Smith

Joint Debtor(s):

Lisa A Maddox

Represented By
Michael Smith

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-15304 Fabiola Puttre

Chapter 13

#91.00 Trustee's Motion to Dismiss Case

EH__

Docket 27

*** VACATED *** REASON: WITHDRAW OF MOTION FILED 3/22/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fabiola Puttre

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-15522 Jesus Danny Ontiveros, III and Marie Irene Ontiveros

Chapter 13

#92.00 Trustee's Motion to Dismiss Case

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus Danny Ontiveros III

Represented By
Gary S Saunders

Joint Debtor(s):

Marie Irene Ontiveros

Represented By
Gary S Saunders

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-15678 Nicholas Asamo

Chapter 13

#93.00 CONT Trustee's Motion to Dismiss Case

From: 3/30/17

EH__

Docket 23

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nicholas Asamo

Represented By
Stephen S Smyth
William J Smyth

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-16545 Mike P Cardenas and Patricia I Cardenas

Chapter 13

#94.00 Motion for Order Dismissing Chapter 13 Proceeding

EH__

Docket 20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mike P Cardenas

Represented By
Michael Smith

Joint Debtor(s):

Patricia I Cardenas

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-17068 Cynthia L Tucker

Chapter 13

#95.00 Trustee's Motion to Dismiss Case

EH__

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cynthia L Tucker

Represented By
Claudia L Phillips

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-17647 Jennifer Lynn Anderson

Chapter 13

#96.00 Trustee's Motion to Dismiss Case

EH__

Docket 24

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jennifer Lynn Anderson

Represented By
Steven A Alpert

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-17683 Cresencio Villamayor Irasusta, III and Jennifer P Irasusta

Chapter 13

#97.00 Motion for Order Dismissing Chapter 13 Case (Tax Returns / Refunds)

EH__

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cresencio Villamayor Irasusta III

Represented By
Carey C Pickford

Joint Debtor(s):

Jennifer P Irasusta

Represented By
Carey C Pickford

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-18081 Marcos W Rocha

Chapter 7

#98.00 Trustee's Motion to Dismiss Case

EH__

Docket 33

*** VACATED *** REASON: CASE CONVERTED TO CHAPTER 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marcos W Rocha

Represented By
Michael Smith

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-19180 Barbara Rammell

Chapter 13

#99.00 Trustee's Motion to Dismiss Case

EH__

Docket 25

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
4/10/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Barbara Rammell

Represented By
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, April 27, 2017

Hearing Room 303

12:31 PM

6:16-19656 Jerome D Williams

Chapter 13

#100.00 CONT Trustee's Motion to Dismiss Case

From: 3/9/17, 4/6/17

EH__

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jerome D Williams

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

6:12-34481 James J Alvarado and Pamela P Alvarado

Chapter 13

#1.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11543 Deerfield Dr. Yucaipa CA 92399

MOVANT: US BANK TURST NA AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST, BY CALIBER HOME LOANS

EH__

Docket 98

Tentative Ruling:

05/02/17

Service: Proper

Opposition: Yes

Movant has established sufficient grounds to support relief from stay. Debtors dispute, without evidence, that they are behind 10 payments, and indicate that they will propose an APO and/or provide proof of payments made.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

James J Alvarado

Represented By

Dale Parham - INACTIVE -

Michael Smith

Joint Debtor(s):

Pamela P Alvarado

Represented By

Dale Parham - INACTIVE -

Michael Smith

Movant(s):

U.S. Bank Trust, N.A. as Trustee for

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

CONT... James J Alvarado and Pamela P Alvarado

Chapter 13

Christina J O

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By

Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

6:13-15137 Ramiro Delgado Flores

Chapter 13

#2.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 8083 Surrey Lane, Alta Loma, CA 91701

MOVANT: US BANK NATIONAL ASSOCIATION

EH__

Docket 112

Tentative Ruling:

05/02/2017
Service: Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANTED as to relief requested under ¶¶ 3 and 12. DENIED as to request for APO as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Ramiro Delgado Flores

Represented By
Andrew S Bisom

Movant(s):

US Bank National Association, as

Represented By
Christina J O

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

6:13-18196 Linda Ann Lynch

Chapter 13

#3.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11860 Novella Ct, Rancho Cucamonga, CA 91701

MOVANT: US BANK TRUST NA AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST

EH__

Docket 93

Tentative Ruling:

05/02/2017

Parties to address adequate protection discussions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Linda Ann Lynch

Represented By
Andrew Edward Smyth
William J Smyth
Stephen S Smyth

Movant(s):

U.S. Bank Trust, N.A., as Trustee

Represented By
Kristin A Zilberstein

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

6:13-21366 Enrique Lopez Matias and Teresa Duarte Matias

Chapter 13

#4.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 760 Augusta Street, Hemet, CA 92545

MOVANT: US BANK NATIONAL ASSOCIATION

EH _____

Docket 57

Tentative Ruling:

05/02/2017
Service: Proper
Opposition: Yes

Debtors' sole basis for opposition, without evidence, is that the Property is necessary to reorganization because it is a family home. However, the opposition fails to address the nonpayment of postpetition mortgage. Additionally, Debtors request that the request for waiver of the 14-day stay be denied for lack of cause. However, the failure of Debtors to pay Movant in approximately 11 months is a sufficient basis to warrant waiver of the 14-day stay. Based on the foregoing, the Court is inclined to GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay and GRANT the relief requested under ¶3. The request for an APO is DENIED as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Enrique Lopez Matias

Represented By
John F Brady
Lisa H Robinson

Joint Debtor(s):

Teresa Duarte Matias

Represented By
John F Brady

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

CONT... Enrique Lopez Matias and Teresa Duarte Matias
Lisa H Robinson

Chapter 13

Movant(s):

U.S. Bank National Association

Represented By
Nina Z Javan
Natalie E Zindorf
Caren J Castle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

6:14-12126 Simon E. Williams

Chapter 13

#5.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 79039 Lake Club Drive, Bermuda Dunes, CA 92203

MOVANT: NATIONSTAR MORTGAGE LLC

EH _____

Docket 109

Tentative Ruling:

05/02/2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
GRANTED as to ¶¶ 3 and 12.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Simon E. Williams

Represented By
Jenny L Doling

Movant(s):

Nationstar Mortgage LLC as

Represented By
Kristin A Zilberstein

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

6:15-12820 Jose Ceja, Jr and Chasity Ann Ceja

Chapter 13

#6.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3853 Arlington, San Bernardino, CA 92404

MOVANT: WELLS FARGO BANK NATIONAL ASSOCIATION AS TRUSTEE FOR MORGAN STANLEY CAPITAL I INC TRUST 2006-HE1 MORTGAGE

EH__

Docket 134

Tentative Ruling:

05/02/2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1) and GRANT waiver of 4001(a)(3) stay. Request under § 362 (d)(2) is DENIED based on lack of evidentiary support and request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Jose Ceja Jr

Represented By
Dana Travis

Joint Debtor(s):

Chasity Ann Ceja

Represented By
Dana Travis

Movant(s):

Wells Fargo Bank, National

Represented By
Can Guner

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

CONT... Jose Ceja, Jr and Chasity Ann Ceja

Chapter 13

Sean C Ferry

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

6:16-16179 Raul Navarrette and Leslie Navarrette

Chapter 13

#7.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 3083 Avalon Parkway, Perris, CA 92571

MOVANT: CITIMORTGAGE INC

From: 4/4/17

EH__

Docket 31

***** VACATED *** REASON: PER STIPULATED ORDER ENTERED
4/27/17**

Tentative Ruling:

Tentative Ruling:

4/4/17

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶ 2 and 3. DENY request under ¶ 14 for lack of cause shown.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Raul Navarrette

Represented By
Paul Y Lee

Joint Debtor(s):

Leslie Navarrette

Represented By
Paul Y Lee

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

CONT... Raul Navarrette and Leslie Navarrette

Chapter 13

Movant(s):

CitiMortgage, Inc.

Represented By
William F McDonald III
Cheryl A Knapmeyer
Carol M Turek

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

6:16-21112 Bingo Innovations of California, Inc.

Chapter 7

#8.00 CONT Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Civil Case CIVDS 1512462 Pending in San Bernardino Superior Court.

MOVANT: ED KALEFF, FATHER JOSEPH SHEA

From: 3/28/17, 4/4/17

EH__

Docket 17

Tentative Ruling:

03/28/2017

The Movants seek relief to pursue a state court action against the Debtor and related parties. At minimum, the Movants must attach the complaint for the Court to examine any potential impacts the Complaint may have on the instant bankruptcy case.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Bingo Innovations of California, Inc.	Represented By Stuart G Steingraber
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Movant(s):

Ed Kalef, Father Joseph Shea	Pro Se
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Trustee(s):

Charles W Daff (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

6:17-10226 Christopher Robert Tyrrell and Micah Heather Wilcox

Chapter 7

#9.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Re: 34086 AGALIYA CRT, LAKE ELSINORE, CA 92532

MOVANT: WELLS FARGO BANK NA

EH _____

Docket 28

Tentative Ruling:

05/02/2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay and request under ¶3. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Christopher Robert Tyrrell

Represented By
Stephen D Brittain

Joint Debtor(s):

Micah Heather Wilcox

Represented By
Stephen D Brittain

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Jason C Kolbe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

CONT... Christopher Robert Tyrrell and Micah Heather Wilcox

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

6:17-10720 Hiep Huu Phan

Chapter 7

#10.00 Motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Marriage of Nguyen and Phan Case # RID 1403749 Dissolution of marriage. Riv Family Law

MOVANT: MAN THI NGUYEN aka WHITNEY NGUYEN

EH__

Docket 12

Tentative Ruling:

05/02/2017

Movant seeks relief from the automatic stay to obtain a judgment for dissolution of marriage, "status only". The Trustee has indicated his nonopposition with the caveat that he opposes any relief as to any determination by the state court as issues regarding separate/community property divisions. Based on the Motion, it appears Movant is not seeking such determinations be made at this time. On this basis, the Court is inclined to GRANT the Motion under 11 U.S.C. § 362(d)(1) to the extent of seeking a judgment of divorce only and as to ¶6 of the request for relief.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Hiep Huu Phan

Represented By
Toby T Tran

Movant(s):

Man Thi Nguyen

Represented By
Nam T Tran

Trustee(s):

Karl T Anderson (TR)

Represented By
Misty A Perry Isaacson

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

6:17-10978 Mahmud Ahmad

Chapter 7

#11.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 TOYOTA CAMRY 4DR SDN

MOVANT: TOYOTA MOTOR CREDIT CORPORATION

EH__

Docket 10

Tentative Ruling:

05/02/2017
Service is Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Mahmud Ahmad

Represented By
Rabin J Pournazarian

Movant(s):

Toyota Motor Credit Corporation as

Represented By
Tyneia Merritt

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

6:17-11368 Cynthia Higl

Chapter 7

#12.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2012 GMC TERRAIN, VIN: 2GKFLWE54C6383188

MOVANT: FIRST TECH FEDERAL CREDIT UNION

EH__

Docket 17

Tentative Ruling:

05/02/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Cynthia Higl

Represented By
Jonathan R Preston

Movant(s):

First Tech Federal Credit Union

Represented By
Nichole Glowin

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

6:17-11752 Christopher Wilkins

Chapter 7

#13.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Re: 1312 Jamaica Lance, Unit #228, Oxnard, CA 93030 .

MOVANT: WELLS FARGO BANK NA

EH__

Docket 16

Tentative Ruling:

05/02/2017
Service: Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(4). Court finds that bankruptcy case was part of a scheme to hinder, delay and defraud creditors based on multiple bankruptcy filings and unauthorized transfers affecting this property. The Court finds bad faith as to the Debtor also noting that this is the second relief from stay granted in this case involving properties subject to multiple bankruptcies and/or unauthorized transfers. GRANT waiver of 4001(a)(3) stay. GRANT pursuant to ¶¶ 3, and 5. DENIED as to ¶ 4 (annulment) 9, 10, and 13 for lack of cause shown.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Christopher Wilkins

Pro Se

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Jason C Kolbe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

CONT... Christopher Wilkins

Chapter 7

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

10:00 AM

6:17-12073 Dianne Ferreria

Chapter 7

#14.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 INFINITI QX60, VIN # 5N1AL0MN8FC504719

MOVANT: NISSAN-INFINITI LT

EH__

Docket 9

Tentative Ruling:

05/02/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Dianne Ferreria

Represented By
Andrew Nguyen

Movant(s):

NISSAN-INFINITI LT.

Represented By
Michael D Vanlochem

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 02, 2017

Hearing Room 303

2:00 PM

6:17-11053 Rio Rancho Super Mall LLC

Chapter 11

#15.00 CONT Motion to Dismiss Or Convert Debtor's Chapter 11 Bankruptcy Case

From: 3/28/17

EH__

Docket 25

***** VACATED *** REASON: PER ORDER ENTERED 4/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

Movant(s):

DSD Note Investors, LLC

Represented By
Leslie A Cohen

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

#1.00 CONT Motion to Approve Compromise Under Rule 9019 Filed Jointly by Chapter 7 Trustee and Revere Financial Corporation to Approve Settlement Contract Between Chapter 7 Trustee and Revere Financial Corporation

From: 3/1/17

Also # 2

EH__

Docket 440

***** VACATED *** REASON: CONTINUED TO 6/14/17 AT 11:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

#2.00 CONT Motion to Approve Compromise Under Rule 9019 between Trustee and Dr. Eric L. Freedman

From: 5/11/16, 6/8/16, 6/29/16, 8/31/16, 10/5/16, 11/9/16, 2/1/17

Also # 1

EH__

Docket 322

***** VACATED *** REASON: CONTINUED TO 9/13/17 AT 11:00 AM**

Tentative Ruling:

05/11/2016

Based on the representations made to the Court by counsel for the Parties that negotiations are ongoing, and based on the consent of the Parties to a continuance, the Court shall CONTINUE the hearing on the Motion to June 8, 2016 at 11:00 a.m.

APPEARANCES ARE WAIVED.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

CONT... Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Trustee(s):

Arturo Cisneros (TR)

Represented By

Chad V Haes

D Edward Hays

Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

6:13-27611 Douglas Jay Roger

Chapter 7

#3.00 CONT Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Jerry Wang, State Court Receiver
(Holding date)

MOVANT: JERRY WANG, STATE COURT RECEIVER

From: 12/3/14, 12/15/14, 1/28/15, 4/15/15, 7/22/15, 9/23/15, 1/27/16, 6/29/16, 9/28/16, 11/16/16, 2/1/17, 2/16/17

Also # 4

EH____

Docket 423

***** VACATED *** REASON: CONTINUED TO 6/14/17 AT 11:00 AM**

Tentative Ruling:

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Movant(s):

Jerry Wang, Duly-Appointed State

Represented By
Jeffrey K Garfinkle
Anthony J Napolitano

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

6:13-27611 Douglas Jay Roger

Chapter 7

#4.00 CONT Objection to Claim #17 by Revere Financial Corporation
(Holding date)

From: 10/1/14, 11/5/14, 12/3/14, 12/15/14, 1/28/15, 4/15/15, 7/22/15, 9/23/15,
10/21/15, 11/18/15, 12/16/15, 1/13/16, 3/2/16, 5/4/16, 6/1/16, 9/28/16, 11/16/16,
2/1/17, 2/16/17

Also # 3

EH____

Docket 333

***** VACATED *** REASON: CONTINUED TO 6/14/17 AT 11:00 AM**

Tentative Ruling:

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:14-01248 Revere Financial Corporation, a California corpora v. Roger, MD

#5.00 CONT Motion to Dismiss Adversary Proceeding Claims of Plaintiff, Jerry Wang, and to Strike and for a More Definite Statement as to Plaintiff, Revere Financial Corporation
(Holding date)

From: 11/5/14, 12/3/14, 12/15/14, 1/28/15, 4/15/15, 7/22/15, 9/23/15, 1/27/16
6/29/16, 9/28/16, 11/16/16, 2/1/17, 2/16/17

Also # 6

EH__

Docket 10

***** VACATED *** REASON: CONTINUED TO 6/14/17 AT 11:00 AM**

Tentative Ruling:

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Douglas J Roger MD

Represented By
Summer M Shaw

Movant(s):

Douglas J Roger MD

Represented By
Summer M Shaw

Plaintiff(s):

A. Cisneros

Represented By
Chad V Haes
D Edward Hays

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

CONT... **Douglas Jay Roger**
Jerry Wang

Chapter 7

Represented By
Franklin R Fraley Jr
Anthony J Napolitano

Revere Financial Corporation, a

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:14-01248

Revere Financial Corporation, a California corpora v. Roger, MD

#6.00 CONT Status Conference RE: Complaint by Revere Financial Corporation, a California corporation, Jerry Wang against Douglas J Roger MD. false pretenses, false representation, actual fraud, 68 Dischargeability - 523(a)(6), willful and malicious injury, 67 Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 41 Objection / revocation of discharge - 727(c),(d),(e) **(Holding date)**

From: 11/26/14, 1/26/15, 1/28/15, 4/15/15, 7/22/15, 9/23/15, 1/27/16, 6/29/16, 9/28/16, 11/16/16, 2/1/17, 2/16/17

Also # 5

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/14/17 AT 11:00 AM**

Tentative Ruling:

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Douglas J Roger MD

Represented By
Summer M Shaw

Plaintiff(s):

A. Cisneros

Represented By
Chad V Haes
D Edward Hays

Jerry Wang

Represented By
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

CONT... Douglas Jay Roger

Chapter 7

Revere Financial Corporation, a

Anthony J Napolitano

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

6:15-10964 Ana Beatriz Duran

Chapter 7

#7.00 Trustee's Final Report and Applications for Compensation

EH _____

Docket 28

Tentative Ruling:

5/3/17

No opposition has been filed.

Service was Proper in the Circumstances.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1250

Trustee Expenses: \$ 309.40

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Ana Beatriz Duran

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

6:15-20230 Daniel Thomas Crowley and Marissa Monique Smith

Chapter 7

#8.00 Trustee's Final Report and Applications for Compensation

EH__

Docket 35

Tentative Ruling:

TENTATIVE RULING

5/3/17

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1381.88

Trustee Expenses: \$ 128.60

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Daniel Thomas Crowley

Represented By
Todd L Turoci

Joint Debtor(s):

Marissa Monique Smith

Represented By
Todd L Turoci

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

CONT... Daniel Thomas Crowley and Marissa Monique Smith

Chapter 7

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

6:15-21334 Tracy Evonne Wilson

Chapter 7

#9.00 Trustee's Final Report and Applications for Compensation

EH__

Docket 94

Tentative Ruling:

TENTATIVE RULING

5/3/17

No opposition has been filed.
Service was Proper.

The applications for compensation of the Trustee, Trustee's Accountant, Trustee's Attorney, and Trustee's Realtor have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$23,408.83
Trustee Expenses: \$148.60

Attorney Fees: \$32,052.50
Attorney Costs: \$2,275.33

Accountant Fees: \$1,984.50
Accountant Costs: \$ 232.20

Realtor Fees: \$28,750.00

Trustee's computation of compensation included an unexplained increase from \$17,658.83 to \$18,588.24, the result of multiplying a portion of the requested fees by 20/19. The basis for this increase is unclear. Trustee's fees have been reduced by the amount of the resulting increase, \$929.41.

**United States Bankruptcy Court
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Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

CONT... Tracy Evonne Wilson

Chapter 7

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Tracy Evonne Wilson

Represented By
Phillip Myer

Trustee(s):

Charles W Daff (TR)

Represented By
Thomas H Casey
Steve Burnell

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

6:16-16766 Alan Roy Holt and Barbara Jo Holt

Chapter 7

#10.00 Trustee's Final Report and Applications for Compensation

EH__

Docket 29

Tentative Ruling:

TENTATIVE RULING

5/3/17

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1,450

Trustee Expenses: \$ 34.82

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Alan Roy Holt

Represented By
Steven A Alpert

Joint Debtor(s):

Barbara Jo Holt

Represented By
Steven A Alpert

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

CONT... Alan Roy Holt and Barbara Jo Holt

Chapter 7

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

6:16-17768 Dispatch Transportation LLC

Chapter 7

#11.00 Motion for 2004 Examination -- Motion of USA Waste of California, Inc. for an Order Authorizing the Examination of Craig Johnson and the Issuance of Subpoenas Duces Tecum to Commodity Trucking Acquisition, LLC and Craig Johnson Pursuant to Fed.R. Bankr.P. 2004

EH__

Docket 46

***** VACATED *** REASON: CONTINUED TO 5/17/17 AT 11:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dispatch Transportation LLC

Represented By
Leonard M Shulman
Elyza P Eshaghi

Movant(s):

USA Waste of California, Inc.

Represented By
Paul J Laurin

Trustee(s):

Charles W Daff (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

6:16-18165 Shannon Nicole Henderson

Chapter 7

#12.00 Motion to Dismiss Case Under 11 USC sect 305 or sect 707 and Vacate Discharge if Previously Entered

EH__

Docket 31

Tentative Ruling:

5/3/17

BACKGROUND

On September 12, 2016, Debtor filed a Chapter 7 voluntary dismissal. A meeting of creditors was scheduled for October 18, 2016. On September 30, 2016, the case was dismissed for failure to file information, apparently because Debtor's certificate of credit counseling was filed late and her statement of financial affairs was not signed. Debtor filed a motion to reconsider dismissal on October 11, 2016, and that motion was granted on December 1, 2016. A new meeting of creditors was set for January 10, 2017. Prior to the meeting of creditors, on January 6, 2017, Debtor received a discharge.

Debtor did not provide her tax returns at the meeting of creditors, and Trustee discovered that Debtor was married, which was not disclosed on the petition. The meeting of creditors was continued to February 9, 2017, at which time Debtor, again, failed to provide her tax returns; she also had not amended her schedules to account for the financial information of her husband. The meeting of creditors was continued to March 22, 2017. Debtor did not appear. On March 30, 2017, Trustee filed a motion to dismiss case and vacate discharge.

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

CONT... Shannon Nicole Henderson

Chapter 7

DISCUSSION

I. Dismissal

11 U.S.C. § 707(a)(1) states:

- (a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including –
 - (1) Unreasonable delay by the debtor that is prejudicial to creditors

Here, Debtor has repeatedly failed to provide her tax returns or amend her petition to accurately portray the households' financial situation. After being provided multiple opportunities to satisfy these obligations, Debtor failed to appear at the recent meeting of creditors. This constitutes unreasonable delay that is prejudicial to creditors, thus warranting dismissal.

II. Section 109(g) Bar

11 U.S.C. § 109(g)(1) states:

- (g) Notwithstanding any other provisions of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if –
 - (1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper

**United States Bankruptcy Court
Central District of California
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Wednesday, May 03, 2017

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11:00 AM

CONT... Shannon Nicole Henderson

Chapter 7

Trustee to discuss his approach to revoking discharge.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Shannon Nicole Henderson	Pro Se
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Movant(s):

Robert Whitmore (TR)	Pro Se
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Trustee(s):

Robert Whitmore (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

11:00 AM

6:17-11807 Marco Bonilla

Chapter 7

#13.00 Motion by United States Trustee to Dismiss Case With A Re-Filing Bar

EH__

Docket 8

Tentative Ruling:

5/3/17

BACKGROUND

On March 9, 2017, Marco Bonilla ("Debtor") filed a Chapter 7 voluntary petition. Debtor had previously filed two Chapter 7 petitions in the previous ninety days, both of which were dismissed for failure to file information. On March 24, 2017, UST filed a motion to dismiss case with a re-filing bar.

DISCUSSION

I. Dismissal

11 U.S.C. § 707(b)(1) permits the Court to dismiss a Chapter 7 case for abuse. 11 U.S.C. § 707(b)(3)(A) states:

(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in

**United States Bankruptcy Court
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11:00 AM

CONT...

Marco Bonilla

Chapter 7

paragraph (2)(A)(i) does not arise or is rebutted, the court shall consider –

(A) whether the debtor filed the petition in bad faith

In determining whether a case should be dismissed under § 707(b)(3)(A), the Court considers the totality of the circumstances, but is ultimately instructed to consider whether "the debtor's intention in filing a bankruptcy petition is inconsistent with the Chapter 7 goals of providing a 'fresh start' to debtors and maximizing the return to creditors." *In re Mitchell*, 357 B.R. 142, 154-55 (Bankr. C.D. Cal. 2006) (listing factors to be considered in making that determination).

The majority of the *Mitchell* factors are inapplicable when, as here, a debtor files a skeletal petition that does not provide the Court with sufficient information to apply the *Mitchell* test. Only factor seven (history of bankruptcy filings) and, possibly, factor nine (egregious behavior) can be assessed when a debtor files a skeletal petition. Both those factors weigh in favor of dismissal when, as here, a debtor repeatedly files skeletal petitions during a short period of time, and does not disclose previous filings. While § 707(a)(1) and (3) provide for dismissal when a debtor fails to fulfill his duties under the Bankruptcy Code, when a debtor repeatedly filed bankruptcy and fails to evince any attempt to comply with the filing requirements, it can be inferred, absent any indication to the contrary, that the debtor's purpose in filing bankruptcy is not to take advantage of the fresh start. *See, e.g., In re Craighead*, 377 B.R. 648, 655 (Bankr. N.D. Cal. 2007) ("Courts generally hold that when a debtor repeatedly files bankruptcy petitions and then repeatedly fails to file schedules or to comply with other requirements, this pattern of behavior is evidence of bad faith and an attempt to abuse the system."). Dismissal under § 707(b)(3) is appropriate in those circumstances.

II. Re-Filing Bar

The court is empowered to impose a refiling bar under 11 U.S.C. § 349(a). As Collier

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CONT...

Marco Bonilla

Chapter 7

notes, courts' analysis of this section is somewhat confused due to confounding "dismissal with prejudice" with "dismissal with injunction against future filings." Collier on Bankruptcy ¶ 349.02[3]; *compare In re Garcia*, 479 B.R. 488 (Bankr. N.D. Ind. 2012) (denying motion for dismissal with prejudice, but imposing three-year refiling bar) *with In re Craighead*, 377 B.R. 648 (Bankr. N.D. Cal. 2007) (appearing to equate dismissal with prejudice with an injunction against refiling).

There is also a circuit split concerning whether an injunction on refiling for more than 180 days is allowed under the Bankruptcy Code. *Compare In re Frieouf*, 938 F.2d 1099 (10th Cir. 1991) (180 days is maximum allowed length of refiling injunction) *with Casse v. Key Bank Nat. Ass'n*, 198 F.3d 327 (2nd Cir. 1999) (injunction against filing for more than 180 days permissible). 11 U.S.C. § 349(a) reads:

Unless, the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

The disagreement revolves around whether the qualifier "Unless, the court, for cause, orders otherwise" modifies the content after the semi-colon. *In re Leavitt* noted this disagreement, but since the court was dealing with a dismissal with prejudice, rather than an injunction against refiling, it did not resolve the issue. 209 B.R. 935, 942 (9th Cir. B.A.P. 1997). Within the Ninth Circuit, it appears the trend is to adopt the reasoning of the Second Circuit and allow injunctions for more than 180 days. *See e.g. In re Velasques*, 2012 WL 8255582 at *3 (Bankr. E.D. Cal. 2012).

Here, Debtor has filed three skeletal bankruptcies in the previous three months and failed to disclose the previous filings. As noted above, the Court has determined that Debtor's behavior is sufficient to warrant dismissal for bad faith and the Court finds the requested one year refiling bar to be appropriate.

Moreover, Debtor's failure to oppose is deemed consent to the relief requested pursuant to Local Rule 9013-1(h).

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Wednesday, May 03, 2017

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11:00 AM

CONT... Marco Bonilla

Chapter 7

TENTATIVE RULING

The Court is inclined to GRANT the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Marco Bonilla

Pro Se

Movant(s):

United States Trustee (RS)

Represented By
Abram Feuerstein esq

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

2:00 PM

6:13-14986 David Wayne Wakefield
Adv#: 6:14-01288 Grobstein v. Wakefield

Chapter 7

#14.00 Examination of Debtor

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Wayne Wakefield

Represented By
Jordan Nils Bursch
Robert E Huttenhoff

Defendant(s):

Elise Wakefield

Pro Se

Joint Debtor(s):

Elise Wakefield

Represented By
Jordan Nils Bursch
Robert E Huttenhoff

Plaintiff(s):

Howard Grobstein

Represented By
Alan W Forsley

Trustee(s):

Howard B Grobstein (TR)

Represented By
Alan W Forsley

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

2:00 PM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat
Adv#: 6:15-01303 Cisneros v. AMERICAN EXPRESS

Chapter 7

#15.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01303. Complaint by A. Cisneros against AMERICAN EXPRESS. (Charge To Estate \$350). For Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers (with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 1/13/16, 3/23/16, 5/25/16, 6/29/16, 8/31/16, 11/2/16, 2/1/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 9/13/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

AMERICAN EXPRESS

Represented By
Robert S Lampl
Chad V Haes

Plaintiff(s):

A. Cisneros

Represented By
D Edward Hays
Chad V Haes

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, May 03, 2017

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2:00 PM

CONT... Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

2:00 PM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat
Adv#: 6:15-01308 Cisneros v. BWI CONSULTING, LLC et al

Chapter 7

#16.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01308. Complaint by A. Cisneros against BWI CONSULTING, LLC, Black and White, Inc., BLACK AND WHITE BILLING COMPANY, BLACK AND WHITE INK, MEHRAN DEVELOPMENT CORPORATION. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers (with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other))

From: 1/13/16, 3/23/16, 5/25/16, 7/27/16, 8/31/16, 11/2/16, 2/1/17

EH__

Docket 1

*** VACATED *** REASON: CONTINUED TO 9/13/17 AT 2:00 PM

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

BLACK AND WHITE INK	Pro Se
MEHRAN DEVELOPMENT	Pro Se
BLACK AND WHITE BILLING	Pro Se
BWI CONSULTING, LLC	Pro Se
Black and White, Inc.	Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

2:00 PM

CONT... Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Plaintiff(s):

A. Cisneros

Represented By
D Edward Hays
Chad V Haes

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

2:00 PM

6:15-19998 Jack C Pryor

Chapter 7

Adv#: 6:17-01050 United States Trustee for the Central District of v. Pryor

#17.00 Status Conference RE: [1] Adversary case 6:17-ap-01050. Complaint by United States Trustee for the Central District of California, Region 16 against Jack C Pryor. (Fee Not Required). with adversary cover sheet Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e)))

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jack C Pryor

Represented By
Stephen R Wade

Defendant(s):

Jack C Pryor

Pro Se

Plaintiff(s):

United States Trustee for the Central

Represented By
Everett L Green

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Brandon J Iskander

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

2:00 PM

6:16-13644 Yolanda Yvette Tyes

Chapter 7

Adv#: 6:16-01200 Chicago Title Insurance Company v. Tyes

#18.00 Motion to Amend Scheduling Order

EH__

Docket 36

Tentative Ruling:

5/3/17

BACKGROUND

On April 25, 2016, Yolanda Tyes ("Defendant") filed a Chapter 7 voluntary petition. On August 1, 2016, Chicago Title Insurance Company ("Plaintiff") filed a complaint to determine nondischargeability of debt against Defendant. On September 13, 2016, the clerk entered default against Defendant. On September 28, 2016, Defendant filed a motion to set aside the entry of default, which was granted on December 1, 2016. On January 23, 2017, a scheduling order was entered. On April 12, 2017, Plaintiff filed a motion to amend the scheduling order.

The current discovery and dispositive motion deadlines in the case are May 15, 2017, and June 9, 2017, respectively. Plaintiff seeks a ninety-day extension of both deadlines. In support of its request, Plaintiff states that many of the parties upon which it has served discovery requests have failed to respond or offered incomplete responses, including Defendant. Plaintiff additionally states that because the facts underlying its state court judgment are over ten years old, it requires additional time to procure necessary information. Plaintiff states that Defendant rejected a ninety day extension, and has not been unresponsive regarding shorter extensions.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, May 03, 2017

Hearing Room 303

2:00 PM

CONT... Yolanda Yvette Tyes

Chapter 7

DISCUSSION

Fed. R. Bankr. P. Rule 7016(a) incorporates Fed. R. Civ. P. Rule 16. Fed. R. Civ. P. Rule 16(b)(4) states: "A scheduled may be modified only for good cause and with the judge's consent." The Ninth Circuit has previously stated: "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment. The district court may modify the pretrial schedule 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). In evaluating a motion to amend the scheduling order, a court may consider:

- (1) Whether the party was diligent in assisting the Court in creating a workable Rule 16 order;
- (2) whether the party's noncompliance with the Rule 16 order occurred due to the development of matters that were reasonable unforeseen or anticipated at the time of the Rule 16 scheduling conference; or
- (3) whether the party was diligent in seeking to amend the Rule 16 order, once it became clear that he could not comply with the order.

Los Feliz Ford, Inc. v. Chrysler Group, LLC, 2012 WL 12886961 at *2 (C.D. Cal. 2012).

Plaintiff's motion establishes that it has acted with diligence. The motion indicates that Plaintiff acted within a reasonable time after entry of the scheduling order, that some entities have been unresponsive or have delayed responding to discovery requests, and that in the process of completing discovery, Plaintiff has obtained new information that could reasonably be said to justify new discovery efforts, unanticipated at the time the scheduling order was entered.

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2:00 PM

CONT... Yolanda Yvette Tyes

Chapter 7

For those reasons, the Court concludes that Plaintiff has satisfied its burden. Furthermore, the Court deems failure to oppose to be consent to the relief requested pursuant to Local Rule 9013-(1)(h).

TENTATIVE RULING

The Court is inclined to GRANT the motion.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Yolanda Yvette Tyes	Pro Se
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Defendant(s):

Yolanda Yvette Tyes	Pro Se
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Movant(s):

Chicago Title Insurance Company	Represented By Charles C H Wu Thanh-Thuy T Luong Vikram M Reddy
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Plaintiff(s):

Chicago Title Insurance Company	Represented By Charles C H Wu Thanh-Thuy T Luong Vikram M Reddy
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**United States Bankruptcy Court
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2:00 PM

CONT... Yolanda Yvette Tyes

Chapter 7

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

2:00 PM

6:16-15419 Francisco Javier Castillo

Chapter 7

Adv#: 6:16-01310 Swift Financial Corporation d.b.a. Swift Capital v. Castillo

#19.00 Status Conference RE: [1] Adversary case 6:16-ap-01310. Complaint by Swift Financial Corporation d.b.a. Swift Capital against Francisco Javier Castillo. willful and malicious injury))

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco Javier Castillo

Represented By
Joseph M Tosti

Defendant(s):

Francisco Javier Castillo

Pro Se

Plaintiff(s):

Swift Financial Corporation d.b.a.

Represented By
Lazaro E Fernandez

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Courtroom 303 Calendar**

Wednesday, May 03, 2017

Hearing Room 303

2:00 PM

6:16-17802 Armon Randolph Sharp

Chapter 7

Adv#: 6:17-01053 Cisneros v. Simpson

#20.00 Status Conference RE: [1] Adversary case 6:17-ap-01053. Complaint by Arturo Cisneros against William J. Simpson. (Charge To Estate). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property))

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Armon Randolph Sharp

Represented By
Daniel King
Raymond W Stockstill

Defendant(s):

William J. Simpson

Pro Se

Plaintiff(s):

Arturo Cisneros

Represented By
Toan B Chung

Trustee(s):

Arturo Cisneros (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
Riverside
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Wednesday, May 03, 2017

Hearing Room 303

2:00 PM

6:16-18609 Carlos Garrido

Chapter 7

Adv#: 6:16-01309 Kercado v. Garrido

#21.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01309. Complaint by Inmaculada Kercado, Maria Inmaculada Kercado against Carlos Garrido. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury))

From: 3/1/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carlos Garrido

Represented By
Inez Tinoco-Vaca

Defendant(s):

Carlos Garrido

Pro Se

Joint Debtor(s):

Maribelle Garrido

Represented By
Inez Tinoco-Vaca

Plaintiff(s):

Maria Kercado

Represented By
Sergio A Rodriguez

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Wednesday, May 03, 2017

Hearing Room 303

2:00 PM

6:16-20927 Mee Soon Kim

Chapter 7

Adv#: 6:17-01012 Simons v. Kim

#22.00 Status Conference RE: [1] Adversary case 6:17-ap-01012. Complaint by Larry Simons against Tae Young Kim. Complaint for (1) Declaratory Relief, (2) To Quiet Title, And (3) Avoidance and Recovery of Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(A) and (B), 550(a)(1) and (2); and, California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(91 (Declaratory judgment)

FROM: 3/29/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mee Soon Kim

Represented By
Minh Duy Nguyen

Defendant(s):

Tae Young Kim

Pro Se

Plaintiff(s):

Larry Simons

Represented By
Michael W Davis

Trustee(s):

Larry D Simons (TR)

Represented By
David Seror
Michael W Davis

**United States Bankruptcy Court
Central District of California
Riverside
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Wednesday, May 03, 2017

Hearing Room 303

2:00 PM

6:17-11311 AHMAD JAMALEDDIN ALJINDI

Chapter 7

Adv#: 6:17-01051 ALJINDI v. US DEPARTMENT OF EDUCATION ET AL

#23.00 Status Conference RE: [1] Adversary case 6:17-ap-01051. Complaint by AHMAD JAMALEDDIN ALJINDI against James L Preston . (Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan))

EH__

Docket 1

***** VACATED *** REASON: ANOTHER SUMMONS ISSUED 3/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

AHMAD JAMALEDDIN ALJINDI Pro Se

Defendant(s):

US DEPARTMENT OF Represented By
Elan S Levey

Plaintiff(s):

AHMAD JAMALEDDIN ALJINDI Pro Se

Trustee(s):

Lynda T. Bui (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 04, 2017

Hearing Room 303

12:30 PM

6:16-18182 Douglas Edward Goodman

Chapter 13

Adv#: 6:16-01277 Reynoso v. Goodman et al

#1.00 Status Conference RE: [13] Amended Complaint by Michael J Hemming on behalf of Mark & Natasha Reynoso against Anne Louise Goodman, Douglas Edward Goodman. (RE: related document(s)1 Adversary case 6:16-ap-01277. Complaint by Mark & Natasha Reynoso against Douglas Edward Goodman, Anne Louise Goodman. false pretenses, false representation, actual fraud) filed by Plaintiff Mark & Natasha Reynoso)

Also # 2

EH__

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Defendant(s):

Anne Louise Goodman

Represented By
Edward T Weber

Douglas Edward Goodman

Represented By
Edward T Weber

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

**United States Bankruptcy Court
Central District of California
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Thursday, May 04, 2017

Hearing Room 303

12:30 PM

CONT... Douglas Edward Goodman

Chapter 13

Plaintiff(s):

Mark & Natasha Reynoso

Represented By
Michael J Hemming

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Thursday, May 04, 2017

Hearing Room 303

12:30 PM

6:16-18182 Douglas Edward Goodman

Chapter 13

Adv#: 6:16-01277 Reynoso v. Goodman et al

#2.00 Motion to Dismiss Adversary Proceeding

Also #1

EH__

Docket 16

Tentative Ruling:

05/04/2017

BACKGROUND

On September 12, 2016, Douglas and Anne Goodman (collectively, "Debtors") filed their petition for chapter 13 relief.

On November 11, 2016, Mark and Natasha Reynoso (collectively, "Plaintiffs") filed a complaint seeking determination of the dischargeability of a debt pursuant to 11 U.S.C. § 523(a)(2)(A) (the "Complaint"). Specifically, Plaintiffs allege that in 2015, they purchased real property located at 1656 West Lisbon Street in Upland, CA (the "Property") from the Debtors, and that a sale was consummated on the misrepresentations of the Debtors' agent, Theresa Mann, that the Property was 3,231 square feet while Plaintiffs assert that the Property is actually 2,713 square feet (or a difference of 518 square feet). Plaintiffs also assert that they were led to believe that a water leak in the upstairs bathroom had been repaired. Plaintiffs allege that the Debtors knew or should have known that their agent was making false and misleading representations to Plaintiffs.

On December 14, 2016, the Debtors filed a Motion to Dismiss the Complaint for failure to state a claim. The Court dismissed the Complaint with leave to amend on February 3, 2017. On February 28, 2017, the Plaintiffs filed their First Amended Complaint (the "FAC"). On March 31, 2017, the Debtors filed a Motion to Dismiss the FAC (the "Motion"). The Plaintiffs filed opposition to the Motion on April 19, 2017 (the "Opposition").

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Thursday, May 04, 2017

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12:30 PM

CONT... Douglas Edward Goodman

Chapter 13

DISCUSSION

As a threshold matter, the issues related to any potential violation of the automatic stay shall not be addressed by the Court on a Motion to Dismiss under Rule 12(b)(6). The Debtors are free to seek relief in the main bankruptcy case in conformity with the Local Bankruptcy Rules, and as otherwise permitted by applicable law.

Civil Rule 12(b)(6) standards

Under Civil Rule 12(b)(6), made applicable in adversary proceedings through Rule 7012, a bankruptcy court may dismiss a complaint if it fails to "state a claim upon which relief can be granted." In reviewing a Civil Rule 12(b)(6) motion, the trial court must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). However, the trial court need not accept as true conclusory allegations in a complaint or legal characterizations cast in the form of factual allegations. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); *Hartman v. Gilead Scis., Inc. (In re Gilead Scis. Sec. Litig.)*, 536 F.3d 1049, 1055 (9th Cir. 2008).

To avoid dismissal under Civil Rule 12(b)(6), a plaintiff must aver in the complaint "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955). It is axiomatic that a claim cannot be plausible when it has no legal basis. A dismissal under Civil Rule 12(b)(6) may be based either on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. *Johnson v. Riverside Healthcare Sys.*, 534 F.3d 1116, 1121 (9th Cir.2008).

Section 523(a)(2)(A) provides that: "A discharge ... 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[.]" To demonstrate that a debt should be excepted from discharge under § 523(a)(2)(A), a creditor must prove five elements: (1) a misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) debtor's knowledge of the falsity or deceptiveness of the statement or conduct at the time it occurred; (3) debtor's intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately

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CONT... **Douglas Edward Goodman**

Chapter 13

caused by its reliance on the debtor's statement or conduct. *Ghomeshi v. Sabban (In re Sabban)*, 600 F.3d 1219, 1222 (9th Cir. 2010); *Oney v. Weinberg (In re Weinberg)*, 410 B.R. 19, 35 (9th Cir.BAP 2009). All five elements must be asserted in the creditor's complaint for an exception to discharge, and the creditor bears the burden of proving each element by a preponderance of the evidence. *Grogan v. Garner*, 498 U.S. 279, 291 (1991); *In re Weinberg*, 410 B.R. at 35.

The facts of the instant case are straightforward. The FAC sets forth allegations that the Debtors, through their real estate agent, made false representations regarding the condition of the Property which the Plaintiffs relied on when they purchased the Property. The Debtors assert that dismissal is warranted because the FAC makes reference only to the agents of the Debtors and not to statements of the Debtors themselves. However, the Debtors have failed to provide any legal authority for the proposition that misrepresentations made by the Debtors' agents are legally insufficient as a basis for upholding a claim under § 523(a)(2)(A). *See In re Paolino*, 75 B.R. 641, 648 (Bankr. E.D.Penn. 1987)(holding that agent's fraud may be imputed to principal under § 523(a)(2)(A)). Moreover, the FAC alleges that Debtor Wife was present when the representation was made and verified/ratified the representation. On this basis, the Motion must be denied. The Court finds that, absent authority to the contrary, the facts are sufficient to state a plausible claim that the Debtors obtained money from the sale of the Property to Plaintiffs and that such sale was obtained by false representations made by the Debtors directly by verification/ratification and/or through their agents. The Court finds that the factual allegations are sufficiently clear to permit Debtors to respond and defend against the Plaintiffs' claim.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to DENY the Motion and permit the litigation to proceed.

APPEARANCES REQUIRED.

Party Information

**United States Bankruptcy Court
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Thursday, May 04, 2017

Hearing Room 303

12:30 PM

CONT... Douglas Edward Goodman

Chapter 13

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Defendant(s):

Anne Louise Goodman

Represented By
Edward T Weber

Douglas Edward Goodman

Represented By
Edward T Weber

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Movant(s):

Anne Louise Goodman

Represented By
Edward T Weber

Douglas Edward Goodman

Represented By
Edward T Weber

Plaintiff(s):

Mark & Natasha Reynoso

Represented By
Michael J Hemming

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Thursday, May 04, 2017

Hearing Room 303

12:30 PM

6:16-18182 Douglas Edward Goodman and Anne Louise Goodman

Chapter 13

#3.00 Motion RE: Objection to Claim Number 11 by Claimant Natasha Reynoso and Mark Reynoso

EH__

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Movant(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, May 04, 2017

Hearing Room 303

12:30 PM

6:16-18248 Juan Jose Franco

Chapter 13

#4.00 CONT Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2010 Chevrolet Suburban 1500 LS Sport Utility
4D Vin:1GNUCHE03AR146168

MOVANT: LOGIX FEDERAL CREDIT UNION

From: 1/31/17, 3/23/17, 4/27/17

EH__

Docket 31

Tentative Ruling:

01/31/2017

Service: Proper

Opposition: Yes

The Motion indicates that the basis for relief is a lack of adequate protection and the declining value of the vehicle. However, no evidence is provided to support either basis for relief. Separately, based on the evidence provided and the attached declaration, it appears that Movant actually intended to seek relief based on a postpetition or post-confirmation default.

The original confirmed chapter 13 plan entered on December 8, 2016, made no mention of the 2010 Chevrolet Suburban or Movant. However, the January 11, 2017, Amended Order Confirming Chapter 13 Plan (entered after the Movant had already filed its Motion for Relief from Stay) specifically indicated that Debtor would make direct payments to Movant. The Debtor concedes that there was an error on his part in the drafting of the plan. However, it is not clear from the Debtor's response why the December payment which would have come due on December 28, 2016, was not made, although it appears implied that the December payment was included in the plan payment. Movant has established cause under § 362(d)(1) to lift the stay based on

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CONT... **Juan Jose Franco**
post-confirmation default.

Chapter 13

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Juan Jose Franco

Represented By
Paul Y Lee

Movant(s):

Logix Federal Credit Union

Represented By
Lazaro E Fernandez

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, May 04, 2017

Hearing Room 303

12:30 PM

6:16-21234 Frank A Horzen and Barbara A Horzen

Chapter 13

#5.00 CONT Motion for Appointment of Debtor Barbara Horzen as Next Friend of Debtor Frank Horzen Pursuant to Fed R BankR. P. 10041

From: 3/30/17, 4/27/17

Also # 6

EH__

Docket 26

Tentative Ruling:

05/04/17

The Debtors filed a supplemental declaration of their counsel on 4/27/17. Based on Counsel's representation that he has advised Mr. Horzen of the bankruptcy filing and that Mr. Horzen has consented to the appointment of his wife as his representative on the basis of his medical condition, the Court is inclined to GRANT the Motion and order the appointment of Mrs. Horzen as the Next Friend of her Mr. Horzen.

APPEARANCES WAIVED. Movant to lodge order within 7 days.

03/30/2017

BACKGROUND

On December 28, 2016, Frank and Barbara Horzen (collectively, "Debtors") filed their petition for chapter 13 relief. Rod Danielson is the duly appointed chapter 13 trustee ("Trustee").

On March 9, 2017, the Debtors filed a Motion for Appointment of Mrs. Horzen as the "Next Friend" of Debtor Frank Horzen ("Motion"). The Motion is based on the Debtors' assertion that Mr. Horzen lacks the capacity to make legal decisions and seeks authority for Mrs. Horzen to "execute all legal decisions" related to the bankruptcy, including permitting Mrs. Horzen to execute documents on behalf of Mr.

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CONT... Frank A Horzen and Barbara A Horzen

Chapter 13

Horzen. Notice was provided to all creditors and to the Trustee and United States Trustee. No opposition has been filed.

DISCUSSION

Fed. R. Bankr.P. 1004.1 allows "a representative, including a general guardian, committee, conservator, or similar fiduciary," to file a voluntary petition on behalf of an incompetent person.

The rule further provides that

[a]n infant or incompetent person who does not have a duly appointed representative may file a voluntary petition by next friend or guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.

Rule 1004.1 is patterned after Fed.R.Civ.P. 17(c), which applies to adversary proceedings pursuant to Fed. R. Bankr.P. 7017. That rule provides that an incompetent person may sue "by a next friend or by a guardian ad litem" if the incompetent person does not have a duly appointed representative, and provides that "[t]he court must appoint a guardian ad litem—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action."

Cases interpreting Rule 17(c) look to the law of the state in which the subject is domiciled and follow the state's incompetency laws." *In re Burchell*, 2014 WL 1304635, at *1 (Bankr. N.D. Ohio 2014)(internal citations omitted). This court shall thus look to the California Probate Code's § 811 which outlines the possible bases for a determination that a person is of unsound mind or lacks capacity to make a decision or do a certain act, including for example, incapacity to contract or to execute wills or trusts.

In support of the Motion, the Debtors have attached the Declaration of Barbara Horzen in which she details the numerous diagnoses of Mr. Horzen made since June 2016 indicating his dementia diagnosis. Particularly persuasive is the correspondence attached as Exhibit E to the Motion, and authenticated by the declaration of Barbara Horzen, which indicates the opinion of Mr. Horzen's Doctor, Sophie K. Chwa, and states that Mr. Horzen is incompetent to make decisions "including those of legal

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consequence." Notwithstanding this diagnosis, § 811(d) provides that "the mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act." Instead, California law requires evidence of specific deficits and a link between the identified deficits and the acts that the allegedly incompetent person would otherwise have capacity to perform. The types of deficiencies are outlined in § 811 as follows:

- (1) Alertness and attention, including, but not limited to, the following:
 - (A) Level of arousal or consciousness.
 - (B) Orientation to time, place, person, and situation.
 - (C) Ability to attend and concentrate.
- (2) Information processing, including, but not limited to, the following:
 - (A) Short- and long-term memory, including immediate recall.
 - (B) Ability to understand or communicate with others, either verbally or otherwise.
 - (C) Recognition of familiar objects and familiar persons.
 - (D) Ability to understand and appreciate quantities.
 - (E) Ability to reason using abstract concepts.
 - (F) Ability to plan, organize, and carry out actions in one's own rational self-interest.
 - (G) Ability to reason logically.
- (3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:
 - (A) Severely disorganized thinking.
 - (B) Hallucinations.
 - (C) Delusions.
 - (D) Uncontrollable, repetitive, or intrusive thoughts.
- (4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to CONTINUE the hearing on the Motion for the Debtors to either provide (1) supplemental evidence establishing that

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the Mr. Horzen is unable to undertake the actions required in connection with the Debtors' duties in a chapter 13 case; or (2) evidence that Counsel has explained to Mr. Horzen that a bankruptcy is being filed in his name and that Mr. Horzen has consented to Mrs. Horzen's appointment as his representative.

As an aside, the Court notes that as the power of attorney provided is of general application and does not specifically permit actions to be taken by Mrs. Horzen in the event of a bankruptcy, the power of attorney does not necessarily provide Mrs. Horzen with the requisite authority.

APPEARNCES REQUIRED.

Party Information

Debtor(s):

Frank A Horzen

Represented By
Paul Y Lee

Joint Debtor(s):

Barbara A Horzen

Represented By
Paul Y Lee

Movant(s):

Barbara A Horzen

Represented By
Paul Y Lee

Frank A Horzen

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-21234 Frank A Horzen and Barbara A Horzen

Chapter 13

#6.00 CONT Confirmation of Chapter 13 Plan

From: 2/2/17, 2/16/17, 3/30/17, 4/27/17

Also # 5

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank A Horzen

Represented By
Paul Y Lee

Joint Debtor(s):

Barbara A Horzen

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-10598 Stephanie V Davis

Chapter 13

#7.00 CONT Confirmation of Chapter 13 Plan

From: 3/2/17, 4/6/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stephanie V Davis

Represented By
Eliza Ghanooni

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-10702 Miriam Louise Preisendanz

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#8.00 Motion RE: Objection to Claim Number 7 by Claimant LVNV Funding, LLC

EH__

Docket 18

Tentative Ruling:

05/04/2017

Background:

On January 28, 2017 ("Petition Date"), Miriam Louise Preisendanz (the "Debtor") filed for chapter 13 relief.

On April 6, 2017, the Debtor filed an Objection to Claim No. 7 (the "Objection") of LVNV Funding, LLC ("Claimant") as assignee of Chase Bank USA, N.A. The Objection was amended on April 10, 2017. The Objection was served on Claimant at the address it has provided on Claim No. 7 where notices should be sent. No opposition has been filed.

Claim #: 7

Amount: \$12,401.46

Objection:

The Debtor objects to the claim on the grounds that the claim is beyond the statute of limitations under state law.

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Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *United States v. Offord Fin., Inc., (In re Medina)*, 205 B.R. 216,222 (9th Cir. BAP 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *Ashford v. Consol. Pioneer Mort. (In re Consol. Pioneer Mort.)*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *Lundell*, 223 F.3d at 1039; *Holm*, 931 F.2d at 623.

Analysis:

Rebuttal of the Prima Facie Proof of Claim

In this case, the Debtor asserts that Claims No. 7 should be disallowed as time barred. Section 502(b)(1) provides that a claim is deemed allowed, unless such claim

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CONT... **Miriam Louise Preisendanz**

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is unenforceable against the debtor and property of the debtor under applicable law. The statute of limitations applicable to common counts is four years if the action is founded upon a contract or other writing (e.g., "book account" (§ 3:398), "account stated" (§ 3:400), or money lent on a note), and the statute of limitations is generally four years from the date of the last item in the account. CCP § 337(1),(2); Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co., 116 CA 4th 1375, 1396, FN. 9 (Cal. App. 2004). Here, the "Account Detail" attached to Claim No. 7 by the Claimant indicates that the last payment on the account was made on November 12, 2008. Thus, the Debtor has met her burden of demonstrating that the claim is unenforceable under state law because it appears that the statute of limitations has lapsed. The burden now shifts to Claimant. Claimant, though properly served, has failed to offer any opposition which this Court deems as consent to the granting of the requested relief pursuant to LBR 9013-1(h).

TENTATIVE RULING

The Court is inclined to SUSTAIN the Debtor's objection in its entirety on the bases that (1) the Claimant has failed to meet its burden to demonstrate the validity of the claim; and (2) that the Claimant's failure to file opposition is deemed consent to the granting of the Debtor's requested relief.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Miriam Louise Preisendanz

Represented By
Danny K Agai

Movant(s):

Miriam Louise Preisendanz

Represented By
Danny K Agai

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Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-10944 Manuel J. Sotelo

Chapter 13

#9.00 CONT Confirmation of Chapter 13 Plan

From: 3/23/17, 4/6/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel J. Sotelo

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-11182 Renard Louis Hamilton and Regina Elizabeth Hamilton

Chapter 13

#10.00 CONT Confirmation of Chapter 13 Plan

From: 3/30/17, 4/6/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Renard Louis Hamilton

Represented By
D Justin Harelik

Joint Debtor(s):

Regina Elizabeth Hamilton

Represented By
D Justin Harelik

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-11456 Jose Alberto Lara-Pena and Yanisleidy Sanchez-Quinonez Chapter 13

#11.00 CONT Confirmation of Chapter 13 Plan

From: 4/6/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Alberto Lara-Pena

Represented By
Luis G Torres

Joint Debtor(s):

Yanisleidy Sanchez-Quinonez

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-11478 Gregory A. King and Jessica A. King

Chapter 13

#12.00 CONT Confirmation of Chapter 13 Plan

From: 4/6/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gregory A. King

Represented By
Michael Jay Berger

Joint Debtor(s):

Jessica A. King

Represented By
Michael Jay Berger

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-12026 Hari Ram

Chapter 13

#13.00 Motion for Order Disallowing Claim Number 2

Also # 14

EH _____

Docket 12

Tentative Ruling:

05/04/2017

Background:

On March 15, 2017 ("Petition Date"), Hari Ram (the "Debtor") filed for chapter 13 relief.

On March 31, 2017, the Debtor filed an Objection to Claim No. 2 (the "Objection") of the County of San Bernardino's Office of Tax Collector (the "County"). The County filed Opposition to the Objection on April 20, 2017 ("Opposition"). The Debtor filed his reply to the Opposition on April 27, 2017 ("Reply").

Claim #: 2

Amount: \$25,695

Objection:

The Debtor objects to the claim on the grounds that the County has included

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CONT...

Hari Ram

Chapter 13

projected tax amounts for 2017 in the claim. The Debtor indicates that he does not agree to the amounts projected by the County and that the inclusion of the projected taxes threatens to make the plan infeasible.

Applicable Law:

As a threshold matter, the docket reflects that the Objection was filed in conformity with the local rules, and served on the County thirty days prior to the hearing by certified mail.

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

In Opposition to the Objection, the County asserts that the "projected" \$4,872.28 arose prepetition pursuant to California law and thus the Objection should be overruled because the amounts included in Claim No. 2 are for prepetition claims. In his Reply, the Debtor does not dispute that the claim arises on January 1 under State law but instead appears to argue that for equitable reasons, the Debtor should not be required to pay his 2017-2018 taxes prior to the April deadline that is provided for all other individuals owing taxes.

Here, the Debtor has failed to cite to any legal authority to support the proposition that a tax claim accrues when billed rather than on the date provided by statute. As such, the Debtor's request that this Court disallow the \$4,872.28 in taxes owed for the 2017-2018 year must be overruled. However, the Court agrees that the Debtor should not be required to pay the interest rate of 18% on the 2017-2018 amount prior to any default. Given that this issue was raised by the Debtor in his Reply, the Court shall permit the County to respond to the Debtor's argument regarding the interest on the \$4,872.28 at the hearing.

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CONT... Hari Ram

Chapter 13

TENTATIVE RULING

The Court is inclined to OVERRULE the Debtor's objection in its entirety.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Hari Ram

Represented By
Dana Travis

Movant(s):

Hari Ram

Represented By
Dana Travis
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-12026 Hari Ram

Chapter 13

#14.00 CONT Confirmation of Chapter 13 Plan

From: 4/27/17

Also # 13

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hari Ram

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-12386 Tracy Franco

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tracy Franco

Represented By
Allan O Cate

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-12397 Robert Nelson

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

EH _____

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Nelson

Represented By
David L Nelson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-12411 Maria I Alcaraz and Eduardo D Alcaraz

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

EH _____

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria I Alcaraz

Represented By
Manfred Schroer

Joint Debtor(s):

Eduardo D Alcaraz

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-12420 Frank Castodio

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

EH _____

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Castodio

Represented By
Lauren Rode

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-12444 Lydia M. Sepulveda

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

EH _____

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lydia M. Sepulveda

Represented By
Ronald W Ask

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-12448 Mary J Leaverton

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

EH _____

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary J Leaverton

Represented By
Patricia M Ashcraft

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-12522 Edward Uy Hidalgo and Trixie Quijada

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

EH _____

Docket 0

*** VACATED *** REASON: CASE DISMISSED 5/3/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edward Uy Hidalgo

Represented By
Keith F Rouse

Joint Debtor(s):

Trixie Quijada

Represented By
Keith F Rouse

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-12576 Edmundo Sabado, Jr.

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

EH _____

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edmundo Sabado Jr.

Represented By
Jennifer Ann Aragon

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-12646 William Rodriguez

Chapter 13

#23.00 Confirmation of Chapter 13 Plan

EH _____

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Rodriguez

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-12647 Joseph V. Lessa and Nichole Alyce Lessa

Chapter 13

#24.00 Confirmation of Chapter 13 Plan

EH _____

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph V. Lessa

Represented By
Paul Y Lee

Joint Debtor(s):

Nichole Alyce Lessa

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-12649 Toni N. Ephraim

Chapter 13

#25.00 Confirmation of Chapter 13 Plan

EH _____

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Toni N. Ephraim

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:13-15679 Helid Ricardo Garcia and Leonor Garcia

Chapter 13

#26.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 73

*** VACATED *** REASON: WITHDRAW OF MOTION FLD 5/2/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Helid Ricardo Garcia

Represented By
Tamar Terzian

Joint Debtor(s):

Leonor Garcia

Represented By
Tamar Terzian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:13-21974 Carlos Enrique Mendoza and Michelle Lea Mendoza

Chapter 13

#27.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 100

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carlos Enrique Mendoza

Represented By
John F Brady
Lisa H Robinson

Joint Debtor(s):

Michelle Lea Mendoza

Represented By
John F Brady
Lisa H Robinson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:13-25336 Enrique Artemio Barba

Chapter 13

#28.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 130

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Enrique Artemio Barba

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:13-28068 Clarence White

Chapter 13

#29.00 CONT Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

From: 4/27/17

EH__

Docket 137

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Clarence White

Represented By
Steven A Wolvek

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:14-23150 Vivian Munson

Chapter 13

#30.00 CONT Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

From: 4/27/17

EH__

Docket 151

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vivian Munson

Represented By
Amanda G Billyard
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Hearing Room 303

12:31 PM

6:14-23388 Jose N Recinos and Patricia Recinos

Chapter 13

#31.00 CONT Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

From: 4/27/17

EH__

Docket 207

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose N Recinos

Represented By
Michael Smith

Joint Debtor(s):

Patricia Recinos

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 04, 2017

Hearing Room 303

12:31 PM

6:14-24084 Michael Lee Barnes and Belinda Ann Barnes

Chapter 13

#32.00 CONT Trustee's Motion to Dismiss Case

From: 3/2/17, 3/9/17, 4/27/17

EH__

Docket 72

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Lee Barnes

Represented By
Todd L Turoci

Joint Debtor(s):

Belinda Ann Barnes

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 04, 2017

Hearing Room 303

12:31 PM

6:15-17793 Kile K Do and Jenieffer Caparas Do

Chapter 13

#33.00 Trustee's Motion to Dismiss Case

EH __

Docket 38

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/2/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kile K Do

Represented By
Dana Travis

Joint Debtor(s):

Jenieffer Caparas Do

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 04, 2017

Hearing Room 303

12:31 PM

6:15-19812 Miguel Vivar and Maria Vivar

Chapter 13

#34.00 Trustee's Motion to Dismiss Case

EH __

Docket 24

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miguel Vivar

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Maria Vivar

Represented By
Rebecca Tomilowitz

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 04, 2017

Hearing Room 303

12:31 PM

6:15-20998 Eric Kissell

Chapter 13

#35.00 Trustee's Motion to Dismiss Case

EH __

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eric Kissell

Represented By
William J Howell

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 04, 2017

Hearing Room 303

12:31 PM

6:16-14087 Donald L Maddox and Lisa A Maddox

Chapter 13

#36.00 CONT Trustee's Motion to Dismiss Case

From: 4/27/17

EH__

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald L Maddox

Represented By
Michael Smith

Joint Debtor(s):

Lisa A Maddox

Represented By
Michael Smith

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 04, 2017

Hearing Room 303

12:31 PM

6:16-15522 Jesus Danny Ontiveros, III and Marie Irene Ontiveros

Chapter 13

#37.00 CONT Trustee's Motion to Dismiss Case

From: 4/27/17

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus Danny Ontiveros III

Represented By
Gary S Saunders

Joint Debtor(s):

Marie Irene Ontiveros

Represented By
Gary S Saunders

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 04, 2017

Hearing Room 303

12:31 PM

6:16-16946 Elliott Howard Blue, Jr. and Yvette Blue

Chapter 13

#38.00 CONT Trustee's Motion to Dismiss Case

From: 4/6/17

EH__

Docket 31

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elliott Howard Blue Jr

Represented By
Michael E Clark
Barry E Borowitz

Joint Debtor(s):

Yvette Blue

Represented By
Michael E Clark
Barry E Borowitz

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 04, 2017

Hearing Room 303

12:31 PM

6:16-17068 Cynthia L Tucker

Chapter 13

#39.00 CONT Trustee's Motion to Dismiss Case

From: 4/27/17

EH__

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cynthia L Tucker

Represented By
Claudia L Phillips

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:12-16380 Zerry B Holefield

Chapter 13

#1.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 15183 Edelweis Street, Fontana, CA 92336

MOVANT: DEUTSCHE BANK NATIONAL TRUST CO

EH__

Docket 110

Tentative Ruling:

5/9/2017

Service is Proper
Opposition: Yes

Subject to cure or APO discussions, the Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under ¶ 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Zerry B Holefield

Represented By
Dale Parham - INACTIVE -
Michael Smith

Movant(s):

Deutsche Bank National Trust

Represented By
Joely Khanh Linh Bui
Mark T. Domeyer
Daniel K Fujimoto
Caren J Castle

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

CONT... Zerry B Holefield

Chapter 13

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:12-29544 Harry Ervin and Irma Lorena Ervin

Chapter 13

#2.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 563 Calumet Avenue, Beaumont, CA 92223

MOVANT: SETERUS INC

From: 4/11/17

EH__

Docket 75

***** VACATED *** REASON: ORDER ENTERED 4/19/17**

Tentative Ruling:

04/11/17
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
GRANT as to ¶¶ 3 and 12 of the prayer for relief.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Harry Ervin

Represented By
Matthew D Resnik

Joint Debtor(s):

Irma Lorena Ervin

Represented By
Matthew D Resnik

Movant(s):

Seterus, Inc. as the authorized

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

CONT... Harry Ervin and Irma Lorena Ervin

Chapter 13

Kristin A Zilberstein

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By

Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:13-18196 Linda Ann Lynch

Chapter 13

#3.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 11860 Novella Ct, Rancho Cucamonga, CA 91701

MOVANT: US BANK TRUST NA AS TRUSTEE FOR LSF9 MASTER
PARTICIPATION TRUST

From: 5/2/17

EH__

Docket 93

***** VACATED *** REASON: ORDER ENTERED 5/5/17**

Tentative Ruling:

05/02/2017

Parties to address adequate protection discussions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Linda Ann Lynch

Represented By
Andrew Edward Smyth
William J Smyth
Stephen S Smyth

Movant(s):

U.S. Bank Trust, N.A., as Trustee

Represented By
Kristin A Zilberstein

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:14-14265 Ricardo Pimentel and Maria Pimentel

Chapter 13

#4.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 7467 Eddy Ave, Riverside, CA 92509-3420

MOVANT: WELLS FARGO BANK NA

EH _____

Docket 47

Tentative Ruling:

Tentative Ruling:

5/9/2017

Service is Proper
Opposition: Yes

Parties to advise Court regarding adequate protection discussions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ricardo Pimentel

Represented By
Tamar Terzian

Joint Debtor(s):

Maria Pimentel

Represented By
Tamar Terzian

Movant(s):

WELLS FARGO BANK, N. A.

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

CONT... Ricardo Pimentel and Maria Pimentel

Chapter 13

Dane W Exnowski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:14-24083 Frederick Arnett Mikel

Chapter 13

#5.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 16290 Avenida De Loring, Moreno Valley, CA 92551

MOVANT: U.S. BANK NATIONAL ASSOCIATION

From: 4/11/17

EH__

Docket 103

Tentative Ruling:

04/11/17
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). Request under § 362(d)(2) is DENIED for failure by Movant to establish that the Property has no equity or that it is not necessary for reorganization. GRANT waiver of 4001(a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Frederick Arnett Mikel

Represented By
Todd L Turoci

Movant(s):

U.S. BANK NATIONAL

Represented By
April Harriott
Sean C Ferry

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

CONT... Frederick Arnett Mikel

Chapter 13

Matthew R. Clark
Keith Labell

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:15-11540 Jesus Manuel Gomez and Maria Gomez

Chapter 13

#6.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 1443 S Idyllwild Ave, Bloomington, CA 92316

MOVANT: WELLS FARGO

From: 4/11/17

EH__

Docket 56

Tentative Ruling:

04/11/17
Service: Proper
Opposition: Yes

Debtors have indicated that they intend to cure by the hearing or request an APO.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jesus Manuel Gomez

Represented By
Dana Travis

Joint Debtor(s):

Maria Gomez

Represented By
Dana Travis

Movant(s):

WELLS FARGO BANK, N. A.

Represented By
Dane W Exnowski

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

CONT... Jesus Manuel Gomez and Maria Gomez

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:15-13535 Gilbert Alfred Torrez, Sr. and Emily Torrez

Chapter 13

#7.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 790 Walnut Cove, Colton, CA 92324

MOVANT: WELLS FARGO BANK, N.A.

From: 4/11/17

EH__

Docket 38

***** VACATED *** REASON: ORDER ENTERED 5/8/17**

Tentative Ruling:

04/11/2017
Service: Proper
Opposition: Yes

Debtors assert they will cure post-petition arrears by the hearing or request an APO.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Gilbert Alfred Torrez Sr.

Represented By
Rabin J Pournazarian

Joint Debtor(s):

Emily Torrez

Represented By
Rabin J Pournazarian

Movant(s):

Wells Fargo Bank, N.A./Wells Fargo

Represented By
Judith Trigg-Hart
Erin Holliday
Christopher Darden

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

CONT...

Gilbert Alfred Torrez, Sr. and Emily Torrez

Angela M Fowler

Megan E Lees

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:15-17060 Chris Alvarado Espinoza

Chapter 13

#8.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 5720 Polaris Court, Mira Loma Area, CA 91752

MOVANT: NATIONSTAR MORTGAGE LLC

From: 4/11/17

EH__

Docket 44

Tentative Ruling:

04/11/2017
Service: Proper
Opposition: None

GRANT relief from the stay under §362(d)(1). GRANT waiver of 4001(a)(3) stay.
GRANT as to ¶¶ 3 and 12. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Chris Alvarado Espinoza

Represented By
Gary S Saunders

Movant(s):

Nationstar Mortgage LLC

Represented By
Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:16-10597 Natasha M Kiehl

Chapter 13

#9.00 CONT Motion For Contempt and Sanctions Against Wells Fargo Bank for the Willful Contempt of Stay, When it Sold Debtors Home in Violation of the Stay

From: 11/1/16, 12/13/16, 2/14/17, 4/11/17

EH__

Docket 19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Natasha M Kiehl

Represented By
Bill J Parks

Movant(s):

Natasha M Kiehl

Represented By
Bill J Parks

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:16-15177 Desert Ranch Management, LLC

Chapter 7

#10.00 Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Pending lawsuit

MOVANT: BRIAN A. GLASSER

EH__

Docket 25

Tentative Ruling:

5/9/17

Service: Proper

Opposition: None

Based on, in part, the ruling on relief from stay granted by Judge Clarkson in the related case Desert Ranch LLLP, at hearing on May 2, 2017, and for the same reasons, the Court is inclined to GRANT the motion as modified by Chapter 7 Trustee's limited opposition.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Desert Ranch Management, LLC

Represented By
Jenny L Doling

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

CONT... Desert Ranch Management, LLC

Chapter 7

Movant(s):

Brian A. Glasser, Successor Trustee

Represented By
Franklin C Adams

Trustee(s):

Arturo Cisneros (TR)

Represented By
Robert P Goe

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:16-16263 Tanyua A Gates-Holmes

Chapter 13

#11.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 23631 Rhea Drive, Moreno Valley, CA 92557

MOVANT: NATIONSTAR MORTGAGE LLC

From: 4/11/17

EH__

Docket 26

*** VACATED *** REASON: ORDER ENTERED 4/24/17

Tentative Ruling:

04/11/17

Service: Proper

Opposition: Yes

Debtor asserts that Movant is adequately protected by the 8.5% estimate of adequate protection. The Court finds this equity cushion insufficient under *Mellor*. Further, Debtor has also provided evidence that a wire transfer of \$3,435.06 has been made to Movant. However, this amount is less than the total amount owed in arrears.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Tanyua A Gates-Holmes

Represented By
John F Brady

Movant(s):

Nationstar Mortgage LLC as

Represented By
Kristin A Zilberstein

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

CONT... Tanyua A Gates-Holmes

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:16-17342 Natasha Marie Kiehl and Phillip Nathan Kiehl

Chapter 13

#12.00 CONT Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Mobile Home on 2.5 acres

HOLDING DATE

MOVANT: NATASHA MARIE KIEHL AND PHILLIP NATHAN KIEHL

From: 11/1/16, 12/13/16, 2/14/17, 4/11/17

Also #13

EH__

Docket 21

*** VACATED *** REASON: CASE DISMISSED 4/28/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Natasha Marie Kiehl

Represented By
Bill J Parks

Joint Debtor(s):

Phillip Nathan Kiehl

Represented By
Bill J Parks

Movant(s):

Phillip Nathan Kiehl

Represented By
Bill J Parks

Natasha Marie Kiehl

Represented By
Bill J Parks

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

CONT... Natasha Marie Kiehl and Phillip Nathan Kiehl

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:16-17342 Natasha Marie Kiehl and Phillip Nathan Kiehl

Chapter 13

#13.00 CONT Motion for relief from the automatic stay with supporting declarations
UNLAWFUL DETAINER RE: 10822 Manada Rd Phelan CA 92371
HOLDING DATE

MOVANT: NICOLE TRACY C WANG

CASE DISMISSED: 4/27/17

From: 11/1/16, 12/13/16, 2/14/17, 4/11/17

Also #12

EH__

Docket 17

Tentative Ruling:

8/30/16

Service is Improper

Opposition: Due at the hearing.

Service is improper because Movant did not serve the Debtors, in addition to Debtors' counsel, with the Notice and Motion as required by LBR 4001-1(c). Additionally, Movant has not provided any evidence that she provided telephonic notice of the hearing to all parties entitled to receive notice, as set forth in the Judge's self calendar instructions.

The Court also notes that Movant sets forth a basis for relief under § 362(d)(1) on page 3 of the Motion, but failed to request such relief on page 5 of the Motion. Thus, unless an amended motion is filed and served addressing such discrepancy, the Court would be inclined to deny any relief sought under § 362(d)(1).

Finally, it appears the underlying foreclosure sale may be void as occurring during the prior case filed by Natasha Kiehl.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

CONT... Natasha Marie Kiehl and Phillip Nathan Kiehl

Chapter 13

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Natasha Marie Kiehl

Represented By
Bill J Parks

Joint Debtor(s):

Phillip Nathan Kiehl

Represented By
Bill J Parks

Movant(s):

Nicole Wang

Represented By
Chi L Ip
Gerald N Sims

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:16-19783 Melanie Lourdes Davis

Chapter 13

#14.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2004 Lincoln Aviator

MOVANT: QUALITY ACCEPTANCE LLC

EH _____

Docket 31

Tentative Ruling:

5/9/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). DENY request under § 362(d)(2) for lack of cause shown. GRANT waiver of 4001(a)(3) stay. GRANT request under § 1301(a). GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Melanie Lourdes Davis

Represented By
Gary S Saunders

Movant(s):

Quality Acceptance, LLC

Represented By
Robert S Lampl

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:16-20056 Todd Christopher Tyrrell and Kelly Jean Tyrrell

Chapter 7

#15.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 15366 Cayuse Ct, Riverside, CA 92506

MOVANT: WELLS FARGO BANK NA

EH _____

Docket 25

***** VACATED *** REASON: CONTINUED TO 6/20/17 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Todd Christopher Tyrrell

Represented By
Matthew Abbasi

Joint Debtor(s):

Kelly Jean Tyrrell

Represented By
Matthew Abbasi

Movant(s):

WELLS FARGO BANK, N.A., AS

Represented By
Tyneia Merritt

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:16-21234 Frank A Horzen and Barbara A Horzen

Chapter 13

#16.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 19579 Casmelia Street, Rialto, CA 92377

MOVANT: DEVELOPER'S CAPITAL INC

EH__

Docket 34

Tentative Ruling:

5/9//2017

Service is Proper
Opposition: Yes

The Court is inclined to DENY the motion without prejudice. Movant's request for relief only requests relief under § 362(d)(2). Section 362(d)(2) requires Movant to show that the property is unnecessary to an effective reorganization and that Debtors have no equity in the property. This case is a Chapter 13 proceeding and the property at issue is Debtors' primary residence. In this situation, absent any indication to the contrary, the property is necessary to an effective reorganization. Furthermore, Movant does not identify the fair market value of the property or whether there are any additional liens on the property, and, therefore, has not demonstrated that Debtors have no equity in the property.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Frank A Horzen

Represented By
Paul Y Lee

Joint Debtor(s):

Barbara A Horzen

Represented By
Paul Y Lee

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

CONT... Frank A Horzen and Barbara A Horzen

Chapter 13

Movant(s):

Developers Capital, Inc., Employees

Represented By
Russel T Little

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:17-11449 Alfredo Rios

Chapter 7

#17.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1522 West 247 Street, Harbor City (LA), CA 90710

MOVANT: DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RESIDENTIAL ACCREDIT LOANS INC PASS THROUGH CERTIFICATES

EH__

Docket 12

***** VACATED *** REASON: CASE DISMISSED 4/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alfredo Rios

Pro Se

Movant(s):

Deutsche Bank Trust Company

Represented By
Erica T Loftis

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:17-11605 Mary Elizabeth Pena

Chapter 7

#18.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 SUBARU BRZ

MOVANT: TD AUTO FINANCE

EH__

Docket 10

Tentative Ruling:

5/9/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Mary Elizabeth Pena

Represented By
Nicholas M Wajda

Movant(s):

TD Auto Finance LLC

Represented By
Sheryl K Ith

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:17-11693 Sara Palacios

Chapter 7

#19.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 HONDA CIVIC, VIN:SHHF K7H5 9HU4 05248

MOVANT: AMERICAN HONDA FINANCE CORPORATION

EH __

Docket 9

Tentative Ruling:

5/9/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Sara Palacios

Represented By
Todd L Turoci

Movant(s):

AMERICAN HONDA FINANCE

Represented By
Vincent V Frounjian

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, May 09, 2017

Hearing Room 303

10:00 AM

6:17-13063 Ethel N Odimegwu

Chapter 13

#20.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Real Property and Personal Property

MOVANT: ETHEL N ODIMEGWU

EH__

Docket 14

Tentative Ruling:

5/9/17

Service: Proper in the circumstances
Opposition: None

Movant having provided sufficient evidence to rebut the presumption that the case was not filed in good faith, the Court is inclined to GRANT the motion and continue the automatic stay as to all creditors.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ethel N Odimegwu

Represented By
Michael Smith

Movant(s):

Ethel N Odimegwu

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:17-13072 Ricardo Menendez

Chapter 13

#21.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 245 South Iris Street San Bernardino CA 92410

MOVANT: RICARDO MENENDEZ

EH__

Docket 13

Tentative Ruling:

5/9/17

Movant having provided sufficient evidence to rebut the presumption that the case was not filed in good faith, the Court is inclined to GRANT the motion and continue the automatic stay as to all creditors.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ricardo Menendez

Represented By
Sunita N Sood

Movant(s):

Ricardo Menendez

Represented By
Sunita N Sood

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

2:00 PM

6:14-23216 Bucur Rentals, LLC

Chapter 11

#22.00 CONT Order (1) Setting Scheduling Hearing And Case Management Conference And (2) Requiring Status Report re Post Confirmation Status Conference

From: 12/2/14, 3/3/15, 3/10/15, 3/31/15, 5/27/15, 6/3/15, 6/16/15, 6/22/15, 7/7/15, 7/21/15, 7/28/15, 9/22/15, 10/20/15, 12/8/15, 12/15/15, 3/1/16, 4/26/16, 9/6/16, 12/6/16, 4/4/16

EH__

Docket 6

***** VACATED *** REASON: FINAL DECREE ORDER AND ORDER
CLOSING CHAPTER 11 CASE ENTERED 5/9/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bucur Rentals, LLC

Represented By
Michael Jay Berger

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Hearing Room 303

2:00 PM

6:17-10724 Bausman and Company Incorporated

Chapter 11

#23.00 Motion for Entry of an Order Authorizing (1) Nunc Pro Tunc Rejection of Non Residential Real Property Lease located in West Hollywood, California

Also #24

EH _____

Docket 53

Tentative Ruling:

5/9/17

BACKGROUND

On January 30, 2017, Bausman & Company, Incorporated ("Debtor") filed a Chapter 11 voluntary petition. Debtor leased certain real property located in West Hollywood from Pacific Design Center I, LLC. On March 31, 2017, Debtor filed a motion for entry of an order authorizing *nunc pro tunc* rejection of non-residential real property lease located in West Hollywood, California pursuant to 11 U.S.C. § 365. The Debtor also requests (1) that a deadline be set regarding the filing of a proof of claim in relation to the rejection of the executory contract, and (2) that any personal property of the Debtor be abandoned.

DISCUSSION

11 U.S.C. § 365(a) states:

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CONT... **Bausman and Company Incorporated**

Chapter 11

Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

Pursuant to § 1107(a), a debtor in possession has the same rights as a trustee, and, therefore, can exercise a trustee's right to reject an executory contract or unexpired lease. *See, e.g., In re Merchants Plaza, Inc.*, 35 B.R. 888, 891 (Bankr. E.D. Tenn. 1983). In analysis a motion to reject an executory contract or unexpired lease, the Court applies the business judgment rule. *See In re G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000). Here, Debtor states that it has vacated the premises and that the lease is of no further use to Debtor. Debtor has provided a declaration from an officer that states that continued lease payments are not justified by property's returns. An executory contract or unexpired lease that is of negative utility to a business warrants rejection. The Court deems failure to oppose to be consent to the relief requested.

Nunc pro tunc rejection of an executory contract is permissible "when necessary or appropriate to carry out the provisions of § 365(d). *In re At Home Corp.*, 392 F.3d 1064, 1071 (9th Cir. 2004). Nevertheless, the standard for authorization of *nunc pro tunc* rejection also imposes an "exceptional circumstance test." *See In re New Meatco Provisions, LLC*, 2014 WL 2446314 at *4 (*citing id.* at 1072-75). The test is as follows:

In deciding whether retroactive rejection is warranted, the bankruptcy court should consider the following nonexclusive factors: (1) the immediate filing of the debtor's motion to reject the lease; (2) the debtor's prompt action setting the motion for hearing; (3) the vacancy of the leased premises; and (4) the landlord's motivation in opposing retroactive rejection of the lease to the motion filing date.

Id. The first two factors, generally constituting delay, weigh against *nunc pro tunc* relief. Debtor waited two months before filing the motion to reject the lease, and set the matter for hearing on thirty-nine days notice, when there were two earlier dates available for self-calendaring. Nevertheless, factors three and four weigh in favor of *nunc pro tunc* rejection, since Debtor has already vacated the premises and the landlord has not opposed the motion. The failure of the landlord to oppose and the

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CONT... **Bausman and Company Incorporated**

Chapter 11

absence of any apparent prejudice resulting from Debtor's delay, combined with the fact that Debtor vacated the premises on March 31st, leads to a conclusion that *nunc pro tunc* rejection is warranted in this case.

Next, Debtor requests that any personal property left on the premises be determined to be abandoned pursuant to § 554(a). However, there is no evidence regarding the personal property that Debtor seeks to abandon.

Finally, Debtor requests the imposition of a deadline for filing claims related to the rejection of the unexpired lease. Debtor requests that the deadline be set at: "the later of (a) 30 days after entry of an order granting this Motion or (b) the deadline set by the Court for prepetition claims to be filed." The deadline for filing claims is August 31, 2017. Therefore, the deadline for filing claims arising from the rejection of the unexpired lease will be August 31, 2017.

TENTATIVE RULING

The Court is inclined to GRANT the motion, subject to evidence regarding personal property left on the premises as of the date of rejection.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Bausman and Company Incorporated

Represented By
William A Smelko

Movant(s):

Bausman and Company Incorporated

Represented By
William A Smelko

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CONT... Bausman and Company Incorporated

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2:00 PM

6:17-10724 Bausman and Company Incorporated

Chapter 11

#24.00 Application to Employ Procopio, Cory, Hargreaves & Savitch as Counsel to Debtor -In-Possession

Also #23

EH _____

Docket 25

Tentative Ruling:

5/9/17

BACKGROUND

On January 30, 2017, Bausman & Company, Incorporated ("Debtor") filed a Chapter 11 voluntary proceeding. On February 14, 2017, Debtor filed an application to employ Procopio, Cory, Hargreaves & Savitch ("Counsel") as counsel to Debtor. The application, however, was not set for hearing, nor was it filed pursuant to Local Rule 9013-1(o). On April 5, 2017, Debtor filed an amended application to employ Counsel, and set the matter for hearing. Debtor's amended application also states that changes to the fee arrangement were made after consultation with the UST.

DISCUSSION

11 U.S.C. § 327(a) states:

Except as otherwise providing in this section, the trustee, with the court's

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CONT...

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Chapter 11

approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

Regarding the standard for the employment of professional persons, one court has stated:

The trustee, subject to the court's approval, has broad discretion in his selection of counsel and the terms of employment. There are, however, two threshold requirements that the trustee must satisfy. First, the trustee must demonstrate that the attorney proposed to be employed meets certain statutory standards. Second, the employment must be reasonably necessary.

In re Computer Learning Ctrs., Inc., 272 B.R. 897, 903 (Bankr. E.D. Va. 2001) (citations omitted).

Regarding whether the proposed employment is reasonable and necessary, one court has stated:

Thus, once the trustee meets the burden of demonstrating that an applicant for professional employment is qualified under § 327, the discretion of the bankruptcy court must be exercised in a way that it believes best serves the objectives of the bankruptcy system. Among the ultimate considerations for the bankruptcy courts in making these decisions must be the protection of the interests of the bankruptcy estate and its creditors, and the efficient, expeditious, and economical resolution of the bankruptcy proceeding.

In re Harold & Williams Dev. Co., 977 F.2d 906, 910 (4th Cir. 1992).

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CONT... Bausman and Company Incorporated

Chapter 11

As set forth in the motion, Debtor has established that employment of counsel is reasonable and appropriate under the circumstances and in accordance with the terms set forth in the application.

Furthermore, the Court deems failure to oppose to be consent to the relief requested pursuant to Local Rule 9013-1(h).

TENTATIVE RULING

The Court is inclined to APPROVE the application.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Bausman and Company Incorporated

Represented By
William A Smelko

Movant(s):

Bausman and Company Incorporated

Represented By
William A Smelko

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Hearing Room 303

2:00 PM

6:16-19604 Sam Daniel Dason DDS,A Professional Dental Corpora

Chapter 11

#25.00 Debtor's Motion to Convert Case Under 11 USC Section 706(a) OR 1112(a)

EH__

Docket 158

Tentative Ruling:

5/9/17

BACKGROUND

On October 28, 2016, Sam Daniel Dason DDS ("Debtor") filed a Chapter 11 voluntary petition. Various first day motions of the Debtor were granted on November 3, 2016, and the Court entered an interim order regarding cash collateral on November 7, 2016. The employment of Kogan Law Firm as counsel was authorized on December 13, 2016.

On January 6, 2017, Debtor filed its Chapter 11 plan and disclosure statement. Objections to the disclosure statement were filed by Juddy Olivares ("Olivares"), UST, Bank of America, and the Trustee for the bankruptcy estate of Sam Daniel Dason. Continued hearings on use of cash collateral and Debtor's disclosure statement are currently scheduled for May 16, 2017.

On April 11, 2017, Debtor filed a motion to convert case to Chapter 7. On April 24, 2017, Olivares filed her opposition. On May 1, 2017, Debtor filed a reply.

DISCUSSION

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CONT... Sam Daniel Dason DDS,A Professional Dental Corpora

Chapter 11

11 U.S.C. § 1112(a) states:

- (a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—
 - (1) The debtor is not a debtor in possession;
 - (2) The case originally was commenced as an involuntary case under this chapter; or
 - (3) The case was converted to a case under this chapter other than on the debtor's request

Olivares uses § 1112(b) as a basis to object to conversion. Section 1112(b) does not provide the proper standard when Debtor voluntarily seeks conversion. One bankruptcy court, in addressing the approach taken by Olivares, has stated the following:

In opposing the debtor's motion, the landlord argues that the court should exercise its discretion under section 1112(b) to deny the conversion motion because such a denial would be in the best interest of the creditors. The fallacy in this argument is that the debtor is proceeding under section 1112(a), not section 1112(b). The former provision, by its terms, gives the debtor an absolute right to convert, unless the case is governed by one of the enumerated exceptions. The legislative history confirms Congress' intent to give debtors an absolute right to convert from chapter 11 to chapter 7.

In re Dieckhaus Stationers of King of Prussia, Inc., 73 B.R. 969, 971 (Bankr. E.D. Pa. 1987). None of the three enumerated exceptions are applicable here. Nevertheless, § 1112(f) imposes a requirement that a debtor be eligible to be a debtor in a chapter to which it seeks conversion. In accordance with the Supreme Court's decision in

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CONT... Sam Daniel Dason DDS, A Professional Dental Corpora Chapter 11

Marrama, a debtor may be deemed ineligible to be a debtor under a different chapter when bad faith or other cause would justify reconversion. *See Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007); *see also* 11 U.S.C. § 706(b) (providing for conversion from Chapter 7 to Chapter 11). Therefore, in opposing a motion under § 1112(a), a party in interest is limited to arguing the enumerated exceptions or challenging a debtor's eligibility under the new chapter.

Here, Olivares has simply not provided a plausible argument why Debtor's eligibility for a Chapter 7 case should be questioned. First, Olivares' opposition argues from an incorrect legal position that assumes it is Debtor's burden to demonstrate why conversion is warranted, as exemplified on page 2 of the opposition: "Here, Debtor offers no basis whatsoever for conversion of the case, and accordingly has failed to carry its burden." Second, to the extent that Olivares makes factual arguments, the arguments are framed to support the appointment of a Chapter 11 trustee. This is problematic for two reasons: (1) there are due process concerns related to raising this request in an opposition, instead of by motion, especially when that opposition does not provide for a full notice period; and (2) more importantly, unless Olivares can establish that Debtor is ineligible to be a debtor under Chapter 7, Debtor has the right to convert its case. Therefore, in order to prevent conversion, Olivares would have needed to present an argument that would have justified reconversion from Chapter 7 to Chapter 11. Here, however, Olivares' arguments tend towards depicting a Chapter 11 proceeding as inappropriate, rather than necessitating reconversion from Chapter 7 to Chapter 11.

Because Olivares has failed show that Debtor is ineligible for Chapter or that this case would need to be reconverted to Chapter 11, Debtor's "absolute" right to convert will not be circumscribed.

TENTATIVE RULING

The Court is inclined to GRANT the motion and CONVERT the case to Chapter 7.

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CONT... Sam Daniel Dason DDS,A Professional Dental Corpora

Chapter 11

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Sam Daniel Dason DDS,A

Represented By
Michael S Kogan

Movant(s):

Sam Daniel Dason DDS,A

Represented By
Michael S Kogan
Michael S Kogan
Michael S Kogan
Michael S Kogan

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2:00 PM

6:16-14140 Welch Management Corporation

Chapter 11

#26.00 CONT Disclosure Statement describing Chapter 11 Plan of Reorganization

FROM: 4/18/17, 4/25/17

Also #27

EH__

Docket 140

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Welch Management Corporation

Represented By
Stephen R Wade
W. Derek May

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6:16-14140 Welch Management Corporation

Chapter 11

#27.00 CONT Order (1) Setting Scheduling Hearing And Case Management Conference And (2) Requiring Status Report

From: 6/7/16, 8/30/16, 11/1/16,3/7/17, 4/18/17, 4/25/17

Also #26

EH__

Docket 4

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Welch Management Corporation

Represented By
Stephen R Wade
W. Derek May

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Wednesday, May 10, 2017

Hearing Room 303

10:00 AM

6:17-10389 Rolando Quinones

Chapter 7

#1.00 Pro se Reaffirmation Agreement Between Debtor and Nissan Motor Acceptance Corporation re: 2014 Nissan Versa

EH__

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rolando Quinones

Pro Se

Trustee(s):

Steven M Speier (TR)

Pro Se

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Hearing Room 303

10:00 AM

6:17-10828 William R Brown and Denice Brown

Chapter 7

**#2.00 Pro se Reaffirmation Agreement Between Debtor and Alaska USA Federal
Credit Union re 2011 Ford Flex**

EH__

Docket 32

***** VACATED *** REASON: CASE DISMISSED 3/21/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William R Brown Pro Se

Joint Debtor(s):

Denice Brown Pro Se

Trustee(s):

Charles W Daff (TR) Pro Se

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11:00 AM

6:10-13285 Laureen Martha Harley

Chapter 7

#3.00 CONT Motion objecting to debtor's claimed exemption in funds pursuant to California Code Of Civil Procedure Section 583.140

From: 4/26/17

EH__

Docket 35

***** VACATED *** REASON: CONTINUED TO 6/7/17 AT 11:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laureen Martha Harley

Represented By

James M Powell - DISBARRED -

Michael H Raichelson

Trustee(s):

Steven M Speier (TR)

Represented By

Robert P Goe

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Hearing Room 303

11:00 AM

6:10-46000 Jerold R Meints

Chapter 7

**#4.00 CONT Status Conference re District Court's order re fees
(HOLDING DATE)**

From: 2/8/17, 3/8/17, 4/5/17, 4/26/17

EH__

Docket 125

Tentative Ruling:

05/10/2017

The Court issued its Order After Remand on May 8, 2017. There being no further matters pending before this Court, this hearing shall be taken off calendar.

APPEARANCES WAIVED.

04/05/2017

The Status Conference is CONTINUED to April 26, 2017, at 11:00 a.m. as a holding date. The Court shall issue an amended order regarding fees ordered against Tunold and Kints in its September 29, 2014, order. Appearances are excused for the April 26, 2017, Status Conference.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Jerold R Meints

Represented By
Gene E O'Brien
Harold M Hewell

Trustee(s):

Helen R. Frazer (TR)

Pro Se

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CONT... Jerold R Meints

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11:00 AM

6:13-13557 Michael Sevilla Santos and Maricar Domingo Santos

Chapter 7

#5.00 Motion to Disallow Claims 5 and 8 filed by Capital Recovery V, LLC

EH__

Docket 102

Tentative Ruling:

05/10/2017

Background:

On February 28, 2013 ("Petition Date"), Michael and Maricar Santos (collectively, the "Debtors") filed for chapter 7 relief. Larry Simons is the duly appointed chapter 7 trustee ("Trustee").

On April 6, 2017, the Trustee filed Objection to Claims No. 5 and 8 (the "Objection") of the Capital Recovery V, LLC (the "Claimant"). Claimant, though properly served, has failed to file opposition to the Objection.

Claim #: 5 (\$3,171.65) & 8 (12,031.86)

Objection:

The Trustee objects to the claim on the grounds that the Claimant has failed to establish its standing to seek payment on the claims, having failed to provide evidence of any assignment or other right to payment.

Applicable Law:

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11:00 AM

CONT... Michael Sevilla Santos and Maricar Domingo Santos

Chapter 7

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

FED. R. BANKR. P. Rule 3001(c)(3)(A) states:

(A) When a claim is based on an open-end or revolving consumer credit agreement – except one for which a security interest is claim in the debtor's real property – a statement shall be filed with the proof of claim, including all of the following information that applies to the account:

- (i) The name of the entity from whom the creditor purchased the account;
- (ii) The name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account;
- (iii) The date of an account holder's last transaction;
- (iv) The date of the last payment on the account; and
- (v) The date on which the account was charged to profit and loss.

First, the Claimant has indicated that as to Claim No. 5 it cannot answer inquiry (ii) of FRBP 3001(c)(3)(A) (Exhibit 1), and that as to Claim No. 8, it cannot answer inquiries (ii) or (iii) (Exhibit 2). Revised Rule 3001 indicates that a creditor who fails to fully comply with the documentation requirements of Rule 3001(c), primarily faces the evidentiary sanction of being precluded from introducing its documents at a subsequent hearing on a substantive objection to its proof of claim under § 502(b). *In re Reynolds*, 470 B.R. 138 (Bankr.D.Colo.2012).

Here, the Trustee has challenged the standing of Claimant. A challenge to standing is a substantive objection under § 502(b)(1) because if a claimant has not

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CONT... Michael Sevilla Santos and Maricar Domingo Santos Chapter 7

proven it is the owner of a claim with a right to payment (i.e. the party with standing), the claim is unenforceable against the debtor under state law. *In re Richter*, 478 B.R. 30, 49 (Bankr. D. Colo. 2012). Accordingly, the Trustee has raised a sufficient substantive objection to Claimant's claims under § 502(b) and as indicated by the Trustee, the Claimant has provided no evidence of the assignment and, in fact, based on the FRBP 3001(c)(3)(A) statements filed in support of both claims, Claimant appears to be wholly unaware of the chain of title for the underlying debts other than its knowledge of the identity of the original creditors. As such, the Court cannot rely even on the basic information requested in the Bankruptcy Rule 3001 Statement to support Claimant's standing.

The facts before this Court closely resemble the facts in *In re Richter*, because Claimant has failed to comply with the Federal Rules of Bankruptcy Procedure (because it provided incomplete information in its Bankruptcy Rule 3001(c)(3)(A) Statement as set forth above, failed to attach any evidence of its claim or the assignment of the claim, and most importantly, failed to respond to the Trustee's Objection). *See id.* Under the holding in *Reynolds* and pursuant to Fed. R. Bankr.P. 3001(c), the Court determines the appropriate remedy for Claimant's failure to attach any documentation to its proof of claim is to preclude the introduction of documents to support the claim at any future hearing on this issue. In addition, due to its failure to timely respond to the Objection despite proper service, Claimant is deemed to consent to the granting of the relief requested by the Trustee under LBR 9013-1(h).

Tentative Ruling

The Court is inclined to SUSTAIN the objection.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Michael Sevilla Santos

Represented By
Jeffrey B Smith

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 10, 2017

Hearing Room 303

11:00 AM

CONT... Michael Sevilla Santos and Maricar Domingo Santos

Chapter 7

Joint Debtor(s):

Maricar Domingo Santos

Represented By
Jeffrey B Smith

Movant(s):

Larry D Simons (TR)

Represented By
Larry D Simons (TR)
Wesley H Avery

Trustee(s):

Larry D Simons (TR)

Represented By
Larry D Simons (TR)
Wesley H Avery

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 10, 2017

Hearing Room 303

11:00 AM

6:15-19998 Jack C Pryor

Chapter 7

#6.00 Motion for Order to Show Cause Why Debtor Should Not Be Held in Further Contempt and Be Bodily Detained Until Such Time as He Complies with Court Orders

EH _____

Docket 253

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jack C Pryor

Represented By
Trent Thompson

Movant(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Brandon J Iskander

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Brandon J Iskander

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 10, 2017

Hearing Room 303

11:00 AM

6:16-18424 JORGE V LAZARO and YESSENIA M LAZARO

Chapter 7

#7.00 CONT Application to Employ Keller Williams Realty & KW Commercial as Real Estate Broker

From: 2/8/17, 3/8/17, 4/5/17

Also #8

EH__

Docket 43

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/1/17**

Tentative Ruling:

02/08/2017

BACKGROUND

On September 20, 2016, Jorge Lazaro and Yessenia Lazaro (collectively, "Debtors") filed their petition for chapter 7 relief. Todd Frealy is the duly appointed chapter 7 trustee ("Trustee"). Among the assets of the bankruptcy estate is certain real property located at 2021 Adrienne Dr. in Corona, CA (the "Property").

On January 5, 2017, the Trustee filed his Application to Employ Keller Williams Realty & KW Commercial ("Broker") as Real Estate Broker ("Application") in order to appraise, market, and sell the Property.

On January 19, 2017, the Office of the United States Trustee ("UST") filed a limited opposition to the alternative compensation structure proposed by the Trustee. Specifically, the Trustee proposed that if the Debtors purchased the estate's equity in the Property, the Broker would receive 6% of the sum paid to the Trustee (the "Alternative Compensation").

On February 1, 2017, the Trustee filed his Reply to UST's Opposition and indicated that he would withdraw his request for approval of the Alternative

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11:00 AM

CONT... **JORGE V LAZARO and YESSENIA M LAZARO**
Compensation.

Chapter 7

DISCUSSION

Pursuant to § 327(a), the trustee, subject to the court's approval, may employ professional persons, such as auctioneers, to perform services for the estate so long as that representation is not adverse to the estate and the professional is a disinterested person. Federal Rule of Bankruptcy Procedure ("F.R.B.P.") 2014 and Local Bankruptcy Rule ("L.B.R.") 2014-1 govern the employment of professional persons.

The Application is supported by the declaration of W. Darrow Fiedler, a licensed real estate broker with Broker. In his declaration, Mr. Fiedler sets forth the disinterestedness of the Broker and his acknowledgment that he cannot be paid without approval from the Bankruptcy Court. The evidence satisfies § 327(a). Additionally, the Court has evaluated the Notice of the Application and service and has determined that the Application complies with FRBP 2014 and LBR 2014.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the Application in its entirety as amended by the Reply, subject to the UST's confirmation that its concerns have been adequately addressed.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

JORGE V LAZARO

Represented By
Daniel S March

Joint Debtor(s):

YESSENIA M LAZARO

Represented By

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CONT... JORGE V LAZARO and YESSENIA M LAZARO
Daniel S March

Chapter 7

Movant(s):

Todd A. Frealy (TR)

Represented By
Anthony A Friedman

Trustee(s):

Todd A. Frealy (TR)

Represented By
Anthony A Friedman

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11:00 AM

6:16-18424 **JORGE V LAZARO and YESSENIA M LAZARO**

Chapter 7

#8.00 CONT Motion to Dismiss Chapter 7 Proceeding

From: 2/8/17, 3/8/17, 4/5/17

Also #7

EH__

Docket 45

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/2/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

JORGE V LAZARO

Represented By
Daniel S March

Joint Debtor(s):

YESSENIA M LAZARO

Represented By
Daniel S March

Movant(s):

JORGE V LAZARO

Represented By
Daniel S March
Daniel S March

Trustee(s):

Todd A. Frealy (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
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Courtroom 303 Calendar**

Wednesday, May 10, 2017

Hearing Room 303

2:00 PM

6:15-18887 Manors San Bernardino Ave LLC

Chapter 7

Adv#: 6:16-01148 Pringle v. O. Allen Alpay, Trustee of the Alpay Living Trust

#9.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01148. Complaint by John P. Pringle against Alpay Living Trust, Manors Construction & Development Co., Inc. (21 (Validity, priority or extent of lien or other interest in property)),(91 (Declaratory judgment))

From: 8/31/16, 10/5/16, 10/11/16, 1/11/17, 1/24/17, 2/8/17

EH__

Docket 1

Tentative Ruling:

10/05/2016

This matter is being CONTINUED to October 11, 2016, at 3:00 p.m. The parties received telephonic notice of the continuance from the Court.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Manors San Bernardino Ave LLC

Represented By
Gaurav Datta

Defendant(s):

Manors Construction &

Pro Se

O. Allen Alpay, Trustee of the Alpay

Represented By
Stephen B Goldberg
Renee De Golier
John L Bailey

Plaintiff(s):

John P. Pringle

Represented By

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2:00 PM

CONT... Manors San Bernardino Ave LLC

Chapter 7

Scott Talkov
Douglas A Plazak

Trustee(s):

John P Pringle (TR)

Represented By
Larry D Simons
Scott Talkov
Frank X Ruggier

**United States Bankruptcy Court
Central District of California
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Courtroom 303 Calendar**

Wednesday, May 10, 2017

Hearing Room 303

2:00 PM

6:14-24056 William Stephen Bonnheim

Chapter 7

Adv#: 6:15-01127 Wedbush Securities Inc v. Bonnheim

#10.00 CONT Pre-Trial Conference RE: [1] Adversary case 6:15-ap-01127. Complaint by Wedbush Securities Inc against William Stephan Bonnheim. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny))

From: 7/27/16, 9/7/16, 11/16/16, 1/1/17, 2/8/17, 4/26/17

EH__

Docket 1

***** VACATED *** REASON: ORDER DISMISSING ADVERSARY
ENTERED 5/9/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Stephen Bonnheim

Represented By
Robert L Firth

Defendant(s):

William Stephan Bonnheim

Represented By
Robert L Firth

Plaintiff(s):

Wedbush Securities Inc

Represented By
John L Erikson Jr

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, May 10, 2017

Hearing Room 303

2:00 PM

6:14-13046 Allen Dale Sanderson

Chapter 7

Adv#: 6:14-01116 Verbree v. Sanderson

#11.00 CONT Pre-Trial Conference RE: [1] Adversary case 6:14-ap-01116. Complaint by Margaret Verbree against Allen Dale Sanderson. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury))

From: 3/29/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allen Dale Sanderson

Represented By
Robert K McKernan

Defendant(s):

Allen Dale Sanderson

Represented By
Robert K McKernan

Plaintiff(s):

Margaret Verbree

Represented By
Stephen A Madoni

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Thursday, May 11, 2017

Hearing Room 303

12:30 PM

6:11-43583 Richard H Brown, Jr.

Chapter 13

Adv#: 6:17-01029 Cohen v. Bank of America, NA et al

#1.00 CONT Status Conference Re Complaint by Amrane Cohen against Bank of America, NA, Ocwen Loan Servicing, LLC, New Penn Financial LLC dba Shellpoint Mortgage Servicing: Nature of Suit: 14 - Recovery of money/property - other, 02 - Other: e.g. other actions that would have been brought in state court if unrelated to bankruptcy, 91 - Declaratory judgment

From: 4/6/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard H Brown Jr.

Represented By
Gary J Holt

Defendant(s):

Ocwen Loan Servicing, LLC

Pro Se

Bank of America, NA

Pro Se

Plaintiff(s):

Amrane Cohen

Pro Se

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:12-12717 **Raymond Rudy Ponce and Gloria De Lira Ponce**

Chapter 13

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

Also #3

EH__

Docket 41

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raymond Rudy Ponce

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Gloria De Lira Ponce

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, May 11, 2017

Hearing Room 303

12:30 PM

6:12-12717 Raymond Rudy Ponce and Gloria De Lira Ponce

Chapter 13

#3.00 Motion for Hardship Discharge

Also #2

EH__

Docket 45

Tentative Ruling:

5/11/17

BACKGROUND

On February 2, 2012, Raymond & Gloria Ponce ("Debtors") filed a Chapter 13 voluntary petition. On April 9, 2012, their Chapter 13 plan was confirmed.

On April 4, 2017, Debtors filed a motion for hardship discharge. Debtors have been in the plan for sixty months. The basis for the hardship discharge is that Debtor-husband was a truck driver. The state of California passed a law that would have required Debtor-husband to obtain a diesel emission control device, at an approximate cost of \$14,255.39. Debtor is currently seventy-two years old, and decided to retire rather than pay for the improvement. Debtors paid \$54,158 to the plan, which had a base balance of \$53,273. Trustee filed comments recommending conditional approval on April 25, 2017.

DISCUSSION

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12:30 PM

CONT... Raymond Rudy Ponce and Gloria De Lira Ponce

Chapter 13

11 U.S.C. § 1328(b) states:

(b) Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if –

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

The first and third standard are discretionary standards. The second standard is a mechanical standard referred to as the "best interests of creditors test". Debtors stated they have met the test because page 6 of their Chapter 13 plan says a Chapter 7 liquidation would not result in any payment to unsecured creditors. Specifically, Debtors state they "have no non-exempt equity in any assets to liquidate." This assertion is not supported by their schedules. Debtors listed unexempt equity in four vehicles, totaling \$4,275. Nevertheless, even if any of these assets were to be administered in a hypothetical Chapter 7 liquidation, costs and priority claims would ensure that there would be no distribution to general unsecured creditors. Therefore, Debtors satisfy the second requirement.

Regarding, the first prong, Debtors have demonstrated that the failure to complete payments is due to circumstances beyond their control. Specifically, the state of California passed a law which would have required Debtor-husband to expend a significant amount of money to continue his employment. Notably, the expenditure required appears to exceed the payoff required to meet the plan, meaning that it

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CONT... Raymond Rudy Ponce and Gloria De Lira Ponce

Chapter 13

Debtor had sought a plan modification to account for the state law requirement, creditors would not have been paid more. No party, including the Trustee, has argued that Debtors have failed to satisfy the requirement imposed by § 1328(b)(1), and, therefore, the Court believes that this case presents circumstances for which Debtors "should not justly be held accountable."

Finally, Debtors must demonstrate the modification is impracticable. Debtors have not mentioned this requirement in their motion. The declaration included in the motion, however, indicates that Debtors do not have the ability to fund a plan at this payment. It is unclear what practical utility would exist in requiring Debtors to attempt to modify their plan so that it would be deemed completed. In fact, one bankruptcy court has considered such a modification to be improper. *See In re Guernsey*, 189 B.R. 477, 484 (Bankr. D. Minn. 1995) ("A debtor should not be allowed to modify a plan under 11 U.S.C. § 1329 to the amount already paid, in circumstances where the 'hardship discharge' afforded by 11 U.S.C. § 1328(b) is otherwise applicable; and, where the use of 11 U.S.C. § 1329 would result in a greater discharge than would be available under 11 U.S.C. § 1328(b)).

Furthermore, the Court deems failure to oppose to be consent to the relief requested pursuant to Local Rule 9013-(1)(h).

TENTATIVE RULING

The Court is inclined to GRANT the motion, subject to compliance with Trustee's comments.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Raymond Rudy Ponce

Represented By
Jenny L Doling
Summer M Shaw

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CONT... Raymond Rudy Ponce and Gloria De Lira Ponce

Chapter 13

Joint Debtor(s):

Gloria De Lira Ponce

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Gloria De Lira Ponce

Represented By
Jenny L Doling
Summer M Shaw

Raymond Rudy Ponce

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:12-15987 James W Smith, Sr. and Cynthia Smith

Chapter 13

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

Also #5

EH _____

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James W Smith Sr.

Represented By
Jenny L Doling

Joint Debtor(s):

Cynthia Smith

Represented By
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:12-15987 James W Smith, Sr. and Cynthia Smith

Chapter 13

#5.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Also #4

EH__

Docket 62

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James W Smith Sr.

Represented By
Jenny L Doling

Joint Debtor(s):

Cynthia Smith

Represented By
Jenny L Doling

Movant(s):

Cynthia Smith

Represented By
Jenny L Doling
Jenny L Doling

James W Smith Sr.

Represented By
Jenny L Doling
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, May 11, 2017

Hearing Room 303

12:30 PM

6:12-23201 Sheldon Clark Chaffer and Margaret Diane Chaffer

Chapter 13

#6.00 Motion for Order to Continue Case Administration of Deceased Debtor's
Bankruptcy Estate and for Waiver of Certification Requirements

EH__

Docket 96

Tentative Ruling:

5/11/17

BACKGROUND

On May 30, 2012, Sheldon & Margaret Chaffer (collectively, "Debtors", and, individually, "Sheldon" and "Margaret") filed a Chapter 13 voluntary petition. Debtors' Chapter 13 plan was confirmed on August 21, 2012. The plan was modified once, on April 11, 2013.

On April 11, 2017, Margaret filed a motion for order to continue case administration of deceased debtor's bankruptcy estate and for waiver of certification requirements under 11 U.S.C. § 1328(a) and (h) and 11 U.S.C. § 522(q).

DISCUSSION

I. Continue Case Administration

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12:30 PM

CONT... Sheldon Clark Chaffer and Margaret Diane Chaffer

Chapter 13

Fed. R. Bankr. P. Rule 1016 deals with "death or incompetency of debtor" and states, in pertinent part:

If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

"Once the terms are defined and confirmed in a Chapter 13 plan, it might be possible to 'further administer' a bankruptcy case even though the debtor died if there is a source of payments or sufficient payments have been made such that a discharge may be warranted." *In re Waring*, 555 B.R. 754, 765 (Bankr. D. Colo. 2016) (collecting cases). Here, a Chapter 13 plan was confirmed prior to Sheldon's passing, and a source of payments remained – his joint-filer and wife, Margaret. Furthermore, Margaret did make those payments and appears to have maintained this plan to near completion.¹ Not only was further administration possible at the time of Sheldon's passing, further administration successfully occurred.

Furthermore, the Court notes that "[i]n the ordinary course, non-consensual dismissal of a bankruptcy case requires a formal motion, notice, and hearing." *In re Erickson*, 183 B.R. 189, 195 (Bankr. D. Minn. 1995). When, as here, no party filed a motion requesting dismissal, there is no need for a motion to "continue case administration" as that is the default absent a request for dismissal.

II. Waiver of Discharge Requirements

The material relief requested in the motion at issue is a request for certain discharge requirements, outlined in 11 U.S.C. § 1328, to be waived for Sheldon. One court, in considering the applicability of the § 1328 certification requirements to a deceased debtor, stated the following: "The fact that a debtor has died does not necessarily

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CONT... **Sheldon Clark Chaffer and Margaret Diane Chaffer** Chapter 13

preclude entry of a discharge. However, for a discharge to be granted, a debtor must still meet the requirements of 11 U.S.C. § 1328." *In re Bouton*, 2013 WL 5536212 at *1 (Bankr. S.D. Ga. 2013). The Court in *Bouton* avoided the requirements by noting that the instructional course requirement is waived for deceased debtors pursuant to § 109(h)(4), and that domestic support certification requirement imposed by § 1328(a) is only applicable to debtors who do owe domestic support payments.

The request here is materially different from the request in *Bouton*. Debtor requests waiver of two requirements: (1) the domestic support payment certification imposed by § 1328(a); and (2) the felony disclosure requirement imposed by § 1328(h).

Regarding the former, Debtor did owe a domestic support obligation. 11 U.S.C. § 1328(a) states, in pertinent part:

- (a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid . . .

There does appear to be at least one bankruptcy court that specifically addressed the applicability of the § 1328(a) and (h) requirements to a deceased debtor in a jointly filed Chapter 13 case, *In re Levy*, 2014 WL 1323165 (Bankr. N.D. Ohio 2014). Notably, the Court stated the following:

Only two documents now stand between the deceased debtor and a discharge: the certifications regarding DSO obligations and § 1328(h). Since further administration was possible, the question becomes whether there is anything either so personal or unique about the end-of-case requirements to prevent

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CONT...

Sheldon Clark Chaffer and Margaret Diane Chaffer

Chapter 13

either waiver or satisfaction of the requirements by another on behalf [of] a deceased debtor.

Id. at *2. Summarily, the court in *Levy* reached the following conclusion:

Since the § 1328(a) certification appears to fall under the latter category [not altering liability on a debt], the court finds no reason that the DSO certification requirement cannot be undertaken by another in appropriate circumstances. The requirement therefore does not impede "further administration" contemplated under Rule 1016.

Similarly, the court reaches the same conclusion about § 1328(h), albeit along slightly divergent reasoning.

Id. at *3. The Court agrees with the result reached in *Levy*. If the certification requirements imposed by § 1328 (a) & (h) invariably required an action to be taken by the debtor personally, the purpose of Fed. R. Bankr. P. Rule 1016, which permits the continued administration of a Chapter 13 case when appropriate, would be frustrated.

Finally, the *Levy* stated the following:

For the purposes of filing end of the case documents, the court finds that a person with specific knowledge of the deceased debtor's finances may act on behalf of the debtor in completing the § 1328(a) and (h) certifications. To establish knowledge, the person must file an affidavit outlining a sufficient factual foundation in order to establish a fitting record.

Id. at *4. In accordance with *Levy*, the Court will not outright waive a requirement

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CONT... **Sheldon Clark Chaffer and Margaret Diane Chaffer** **Chapter 13**
imposed by the Bankruptcy Code, but will allow the requirement to be satisfied by an individual with "specific knowledge of the deceased debtor's finances."

TENTATIVE RULING

In accordance with the above, the Court is inclined to GRANT the motion only to the extent of allowing a qualified individual to complete the § 1328 requirements on behalf of Debtor. The Court declines to enter an order continuing case administration, as administration will continue absent a request for dismissal and a subsequent order.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Sheldon Clark Chaffer

Represented By
Jenny L Doling

Joint Debtor(s):

Margaret Diane Chaffer

Represented By
Jenny L Doling

Movant(s):

Margaret Diane Chaffer

Represented By
Jenny L Doling
Jenny L Doling

Sheldon Clark Chaffer

Represented By
Jenny L Doling
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By

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CONT...

Sheldon Clark Chaffer and Margaret Diane Chaffer

Amrane (RS) Cohen (TR)

Chapter 13

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Thursday, May 11, 2017

Hearing Room 303

12:30 PM

6:12-37357 Jeffrey Fagin and Theresa Fagin

Chapter 13

#7.00 Confirmation of Chapter 13 plan

EH _____

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey Fagin

Represented By
Dana Travis

Joint Debtor(s):

Theresa Fagin

Represented By
Dana Travis

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

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Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:31 PM

6:11-19635 Jason Lee Fernandes and Regina Collette Fernandes

Chapter 13

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

EH ____

Docket 95

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jason Lee Fernandes

Represented By
David Lozano

Joint Debtor(s):

Regina Collette Fernandes

Represented By
David Lozano

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:31 PM

6:11-37439 Barry Thomas Emerzian and Sherry Lynn Emerzian

Chapter 13

#9.00 Trustee's Motion to Dismiss Case Due to Material Default

EH__

Docket 62

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Barry Thomas Emerzian

Represented By
Tyson Takeuchi
Scott Kosner

Joint Debtor(s):

Sherry Lynn Emerzian

Represented By
Tyson Takeuchi
Scott Kosner

Movant(s):

Amrane (RS) Cohen (TR)

Pro Se

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:31 PM

6:11-45689 Emilio Aispuro and Luz Angelica Aispuro

Chapter 13

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

From: 2/9/17, 3/9/17

EH__

Docket 63

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Emilio Aispuro

Represented By
Clifford Bordeaux

Joint Debtor(s):

Luz Angelica Aispuro

Represented By
Clifford Bordeaux

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:31 PM

6:12-13234 Valerie Shenase Price

Chapter 13

#11.00 Trustee's Motion to Dismiss Case failure to complete plan within terms

EH__

Docket 48

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Valerie Shenase Price

Represented By
Manfred Schroer

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:31 PM

6:12-14397 Ray Leon Esparza and Lori Lynn Esparza

Chapter 13

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

From: 2/9/17

EH__

Docket 52

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
4/27/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ray Leon Esparza

Represented By
Chris A Mullen

Joint Debtor(s):

Lori Lynn Esparza

Represented By
Chris A Mullen

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:31 PM

6:12-15489 Jorge N. Perez and Myrna R. Perez

Chapter 13

#13.00 CONT Verified Motion to Dismiss Case Due to Material Default of a Plan Provision

From: 3/9/17

EH__

Docket 82

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jorge N. Perez

Represented By
Lauro Nick Pacheco Jr.

Joint Debtor(s):

Myrna R. Perez

Represented By
Lauro Nick Pacheco Jr.

Movant(s):

Amrane (RS) Cohen (TR)

Pro Se

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:31 PM

6:12-16380 Zerry B Holefield

Chapter 13

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

EH _____

Docket 106

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Zerry B Holefield

Represented By
Dale Parham - INACTIVE -
Michael Smith

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:31 PM

6:12-18561 William D. Sims and Nancy J. Sims

Chapter 13

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

EH__

Docket 129

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William D. Sims

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Nancy J. Sims

Represented By
Patricia M Ashcraft

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:31 PM

6:12-21279 Anthony Ochoa and Ramona Patricia Ochoa

Chapter 13

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

From: 2/9/17, 3/9/17

EH__

Docket 104

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anthony Ochoa

Represented By
Dana Travis

Joint Debtor(s):

Ramona Patricia Ochoa

Represented By
Dana Travis

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:31 PM

6:12-30482 Vilma Rosa

Chapter 13

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

EH__

Docket 64

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vilma Rosa

Represented By
Raymond Gaitan

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:16-20260 Javier Lopez

Chapter 13

Adv#: 6:17-01054 Amarillo College of Hairdressing, Inc. v. Lopez

#18.00 Status Conference Re: Complaint by Amarillo College of Hairdressing, Inc., against Javier Lopez. false pretenses, false representation, actual fraud, 67 - Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 68 - Dischargeability - 523(a)(6), willful and malicious injury

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Javier Lopez

Represented By
Christopher Hewitt

Defendant(s):

Javier Lopez

Pro Se

Joint Debtor(s):

Carmen Lopez

Represented By
Christopher Hewitt

Plaintiff(s):

Amarillo College of Hairdressing,

Represented By
Eamon Jafari

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:16-11303 Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

#19.00 CONT Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

From: 3/23/17, 4/27/17

Also #20- #22

EH__

Docket 61

***** VACATED *** REASON: CONTINUED TO 6/1/17 AT 12:30 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Robert Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joseph Robert Byrne

Represented By
Jenny L Doling
Jenny L Doling
Summer M Shaw
Summer M Shaw

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

CONT... Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:16-11303 Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

#20.00 CONT Motion for Authority to Incur Debt [personal property]

Also #19- #22

EH _____

Docket 60

***** VACATED *** REASON: CONTINUED TO 6/1/17 AT 12:30 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Robert Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joseph Robert Byrne

Represented By
Jenny L Doling
Jenny L Doling
Summer M Shaw
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

CONT... Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:16-11303 Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

#21.00 CONT Trustee's Motion to Dismiss Case

From: 3/23/17, 4/27/17

Also #19- #22

EH__

Docket 56

***** VACATED *** REASON: CONTINUED TO 6/1/17 AT 12:30 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Robert Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:16-11303 Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

#22.00 CONT Trustee's Motion to Dismiss Case

From: 4/27/17

Also #19- #21

EH__

Docket 65

***** VACATED *** REASON: CONTINUED TO 6/1/17 AT 12:30 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Robert Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:16-13976 Donnell Leffridge

Chapter 13

#23.00 Motion To Disgorge Compensation Pursuant To 11 U.S.C. § 329 And Federal Rule Of Bankruptcy Procedure 2017

EH _____

Docket 40

*** VACATED *** REASON: ORDER ENTERED 5/10/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donnell Leffridge

Represented By
Patricia Rodriguez

Movant(s):

United States Trustee (RS)

Represented By
Mohammad Tehrani

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:16-18224 Anna Doreen Valles and Andy Valles, Jr.

Chapter 13

#24.00 Motion by Debtor Objecting to Claim Number 12 of Hyundai Capital America

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna Doreen Valles

Represented By
Ramiro Flores Munoz

Joint Debtor(s):

Andy Valles Jr.

Represented By
Ramiro Flores Munoz

Movant(s):

Andy Valles Jr.

Represented By
Ramiro Flores Munoz

Anna Doreen Valles

Represented By
Ramiro Flores Munoz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:15-13354 Jeffrey Michael Berger and Debra Lynn Berger

Chapter 13

#25.00 CONT Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan

From: 4/27/17

EH _____

Docket 37

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey Michael Berger

Represented By
Jenny L Doling

Joint Debtor(s):

Debra Lynn Berger

Represented By
Jenny L Doling

Movant(s):

Debra Lynn Berger

Represented By
Jenny L Doling
Jenny L Doling

Jeffrey Michael Berger

Represented By
Jenny L Doling
Jenny L Doling
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:16-21234 Frank A Horzen and Barbara A Horzen

Chapter 13

#26.00 Motion to Disallow Claims

EH__

Docket 36

Tentative Ruling:

5/11/17

Background:

On December 28, 2016, Frank & Barbara Horzen ("Debtors") filed a Chapter 13 voluntary petition. On January 27, 2017, the IRS filed an unsecured claim ("Claim 1") in the amount of \$49,892.04, of which \$33,919.96 was claimed as priority debt. On April 11, 2017, the IRS amended its claim ("Amended Claim 1") reducing the total claim and the priority claim to \$4,979.67 and \$4,397.01, respectively. On April 18, 2017, Debtors filed a claim objection.

Debtors objection fails to acknowledge that the IRS amended its claim. The objection states that Debtors have filed all required taxes during the previous four years and do not have any tax debt. Debtors appear to provide redacted tax returns for 2010-2015, although the Court notes that the tax returns are not properly authenticated.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie*

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CONT... **Frank A Horzen and Barbara A Horzen**

Chapter 13

evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *See Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

The basis for Amended Claim #1 is unpaid income taxes assessed against debtor-wife for 2013 and 2014. The amount of Amended Claim #1 is identical to the amount shown on the applicable tax returns. Debtors have provided no evidence that those taxes were paid – the motion does not even allege that taxes were paid, but instead argues that returns were filed.

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CONT... Frank A Horzen and Barbara A Horzen

Chapter 13

It does not appear that Debtors were aware that the IRS amended their proof of claim. Instead of challenging the validity of Amended Claim 1, Debtors appear to challenge the validity of Claim 1, which has been superseded by Amended Claim 1. Because Debtors have not provided any argument or evidence to challenge the validity of Amended Claim 1, Debtors are not entitled to their requested relief.

Tentative Ruling

The Court is inclined to OVERRULE the objection.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Frank A Horzen

Represented By
Paul Y Lee

Joint Debtor(s):

Barbara A Horzen

Represented By
Paul Y Lee

Movant(s):

Barbara A Horzen

Represented By
Paul Y Lee

Frank A Horzen

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:17-10681 Kisha Eugena Stegall-Hill

Chapter 13

#27.00 CONT Confirmation of Chapter 13 Plan

From: 3/9/17, 3/23/17, 4/27/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kisha Eugena Stegall-Hill

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:17-11986 Michelle J Meredith

Chapter 13

#28.00 Motion re: Objection to Claim Number 2 by Claimant Candy Freel

EH _____

Docket 17

*** VACATED *** REASON: CASE DISMISSED 4/27/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michelle J Meredith Pro Se

Movant(s):

Michelle J Meredith Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Hearing Room 303

12:32 PM

6:17-12157 Paulo Cesar Machuca

Chapter 13

#29.00 CONT Confirmation of Chapter 13 Plan

From: 4/27/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paulo Cesar Machuca

Represented By
Scott Kosner

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:17-12710 Michael Montoya

Chapter 13

#30.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Montoya

Represented By
Suzette Douglas

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:17-12712 Jose Luis Castillo

Chapter 13

#31.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Luis Castillo

Represented By
Sunita N Sood

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:17-12745 Gilles Chukwuma Amajoyi

Chapter 7

#32.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

***** VACATED *** REASON: CASE CONVERTED TO CHAPTER 7 ON
5/9/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gilles Chukwuma Amajoyi

Represented By
Lionel E Giron

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:17-12758 Luis A Jovel

Chapter 13

#33.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luis A Jovel

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:17-12773 Diana J Everett

Chapter 13

#34.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Diana J Everett

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:17-12793 Meghan McConaghy

Chapter 13

#35.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

*** VACATED *** REASON: CASE DISMISSED 4/24/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Meghan McConaghy

Represented By
Neil R Hedtke

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:17-12794 Katina Deneen Edwards

Chapter 13

#36.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Katina Deneen Edwards

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:17-12828 Arnold Rudy Morales and Melanie Gae Morales

Chapter 13

#37.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

*** VACATED *** REASON: CASE DISMISSED 4/24/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arnold Rudy Morales

Represented By
John F Brady

Joint Debtor(s):

Melanie Gae Morales

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:17-12835 Maria Luisa Chavez

Chapter 13

#38.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

*** VACATED *** REASON: CASE DISMISSED 4/24/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Luisa Chavez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:17-12888 Tyra Bagby

Chapter 13

#39.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

*** VACATED *** REASON: CASE DISMISSED 4/25/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tyra Bagby

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:17-12893 Joseph DeSilva

Chapter 13

#40.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

*** VACATED *** REASON: CASE DISMISSED 4/25/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph DeSilva

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:32 PM

6:17-12907 Gilbert R Nava

Chapter 13

#41.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gilbert R Nava

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:33 PM

6:13-17553 Kenneth Vernell Hawkins and Brenda A Hawkins

Chapter 13

#42.00 CONT Trustee's Motion to Dismiss Case

From: 3/23/17, 4/27/17

EH__

Docket 97

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth Vernell Hawkins

Represented By
Craig J Beauchamp

Joint Debtor(s):

Brenda A Hawkins

Represented By
Craig J Beauchamp

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:33 PM

6:15-12404 Anthony E Turkson

Chapter 13

#43.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 68

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anthony E Turkson

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:33 PM

6:15-21201 Daniel J Hedlund

Chapter 13

#44.00 Trustee's Motion to Dismiss Case

EH__

Docket 31

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/10/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel J Hedlund

Represented By
David L Nelson

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:33 PM

6:15-21412 Adrienne J Garcelli and Paul Garcelli

Chapter 13

#45.00 CONT Trustee's Motion to Dismiss Case

From: 3/30/17, 4/27/17

EH__

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adrienne J Garcelli

Represented By
Andy C Warshaw

Joint Debtor(s):

Paul Garcelli

Represented By
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:33 PM

6:16-12191 Valicia LaShawn Fennell

Chapter 13

#46.00 CONT Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

From: 3/30/17, 4/27/17

EH__

Docket 35

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Valicia LaShawn Fennell

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:33 PM

6:16-13719 Darryl R Brown and Kimberly J Brown

Chapter 13

#47.00 CONT Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

From: 4/27/17

EH__

Docket 41

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Darryl R Brown

Represented By
M Wayne Tucker

Joint Debtor(s):

Kimberly J Brown

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:33 PM

6:16-14087 Donald L Maddox and Lisa A Maddox

Chapter 13

#48.00 CONT Trustee's Motion to Dismiss Case

From: 4/27/17, 5/4/17

EH__

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald L Maddox

Represented By
Michael Smith

Joint Debtor(s):

Lisa A Maddox

Represented By
Michael Smith

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 11, 2017

Hearing Room 303

12:33 PM

6:16-17683 Cresencio Villamayor Irasusta, III and Jennifer P Irasusta Chapter 13

#49.00 CONT Motion for Order Dismissing Chapter 13 Case (Tax Returns / Refunds)

From: 4/27/17

EH__

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cresencio Villamayor Irasusta III

Represented By
Carey C Pickford

Joint Debtor(s):

Jennifer P Irasusta

Represented By
Carey C Pickford

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

6:11-31782 Dina Guadalupe Garay

Chapter 13

#1.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 3966 Camellia Dr, San Bernardno, CA 92407

MOVANT: USA BANK NATIONAL ASSOCIATION

From: 4/4/17

EH__

Docket 68

***** VACATED *** REASON: CONTINUED TO 6/20/17 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dina Guadalupe Garay

Represented By
Aalok Sikand
Vito Torchia - DISBARRED -

Movant(s):

U.S. BANK NATIONAL

Represented By
Megan E Lees

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

6:13-21366 Enrique Lopez Matias and Teresa Duarte Matias

Chapter 13

#2.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 760 Augusta Street, Hemet, CA 92545

MOVANT: US BANK NATIONAL ASSOCIATION

From: 5/2/17

EH _____

Docket 57

Tentative Ruling:

05/02/2017
Service: Proper
Opposition: Yes

Debtors' sole basis for opposition, without evidence, is that the Property is necessary to reorganization because it is a family home. However, the opposition fails to address the nonpayment of postpetition mortgage. Additionally, Debtors request that the request for waiver of the 14-day stay be denied for lack of cause. However, the failure of Debtors to pay Movant in approximately 11 months is a sufficient basis to warrant waiver of the 14-day stay. Based on the foregoing, the Court is inclined to GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay and GRANT the relief requested under ¶13. The request for an APO is DENIED as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Enrique Lopez Matias

Represented By
John F Brady
Lisa H Robinson

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

CONT... Enrique Lopez Matias and Teresa Duarte Matias

Chapter 13

Joint Debtor(s):

Teresa Duarte Matias

Represented By
John F Brady
Lisa H Robinson

Movant(s):

U.S. Bank National Association

Represented By
Nina Z Javan
Natalie E Zindorf
Caren J Castle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

6:15-19735 Mario C Binuya and Linda Binuya

Chapter 13

#3.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 28214 Basswood Way, Murrieta, CA 92563

MOVANT: U.S. BANK NATIONAL ASSOCIATION

From: 3/28/17

EH__

Docket 48

***** VACATED *** REASON: ORDER ENTERED 5/10/17**

Tentative Ruling:

03/28/2017

Service: Proper

Opposition: Yes

Parties to discuss Debtors' proposed terms for an APO.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Mario C Binuya

Represented By
Michael Smith

Joint Debtor(s):

Linda Binuya

Represented By
Michael Smith

Movant(s):

U.S. Bank National Association

Represented By
April Harriott
Matthew R. Clark

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

CONT... Mario C Binuya and Linda Binuya

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

6:16-13246 Gwendolyn Washington

Chapter 13

#4.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 977 Allegre Drive, Corona, CA 92879

MOVANT: WELL FARGO BANK

CASE DISMISSED: 3/30/17

From: 3/28/17

EH__

Docket 45

***** VACATED *** REASON: CASE DISMISSED 3/30/17**

Tentative Ruling:

03/28/2017
Service: Proper
Opposition: Yes

Debtor asserts she intends to bring post-petition payments current by the hearing date and has reached out to Movant to propose an APO.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Gwendolyn Washington

Represented By
Julie J Villalobos

Movant(s):

WELLS FARGO BANK, N.A.,

Represented By
Matthew R. Clark
Sheri Stein Charlse

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

CONT... Gwendolyn Washington

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

6:16-15581 Dexter Humphrey

Chapter 13

#5.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1990 Scenic Ridge Rd. Chino Hills CA

MOVANT: WILMINGTON SAVINGS FUND SOCIETY

EH__

Docket 39

Tentative Ruling:

05/16/2017
Service: Proper
Opposition: Yes

The Debtor acknowledges the missed payments and asserts that he intends to take money from his 401k to bring the arrears current. The Debtor indicates he has \$10,000 to pay towards the arrears now and is requesting an additional 45 days for cure the remainder.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Dexter Humphrey

Represented By
Michael J Hemming

Movant(s):

Wilmington Savings Fund Society,

Represented By
Bonni S Mantovani
Diana Torres-Brito
Cassandra J Richey

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

6:16-16909 Edward Edmund Zozaya and Georgia Parrilla Zozaya

Chapter 13

#6.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 9617 Surrey Avenue, Montclair, California

MOVANT: WELLS FARGO BANK

EH__

Docket 74

Tentative Ruling:

05/16/2017
Service: Proper
Opposition: Yes

The Debtors assert they have made payments for the last three months but are aware they are otherwise behind on payments. Debtor indicates that he receives payments for jobs on completion and Debtors are requesting an APO to cure the remaining deficiency.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Edward Edmund Zozaya

Represented By
Dana Travis

Joint Debtor(s):

Georgia Parrilla Zozaya

Represented By
Dana Travis

Movant(s):

Wells Fargo BAnk, N.A.

Represented By
April Harriott
Sean C Ferry

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

CONT... Edward Edmund Zozaya and Georgia Parrilla Zozaya

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

6:16-19955 Ernest Leyva

Chapter 13

#7.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 9426 Frait St, Rancho Cucamonga, California 91730

MOVANT: WILMINGTON SAVINGS FUND SOCIETY FSB

EH _____

Docket 32

Tentative Ruling:

05/16/17
Service: Proper
Opposition: Yes

The Order Confirming Chapter 13 Plan entered on December 28, 2016, corroborates the Debtor's assertion that the Debtor's payments are being made to Movant by the Chapter 13 Trustee via conduit payments. Additionally, the Debtor has provided evidence of the Trustee's claim registry which shows payments being disbursed by the Trustee and also reimbursements being made by the Movant. Based on the Trustee's registry, the Debtor appears to have made payments of at least \$6,000 postconfirmation. Further, the request for relief page of the Motion is blank. On that basis, the Court's tentative ruling is to DENY the Motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ernest Leyva

Represented By
Brad Weil

Movant(s):

Wilmington Savings Fund Society,

Represented By
Cassandra J Richey

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

CONT... Ernest Leyva

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

6:16-21112 Bingo Innovations of California, Inc.

Chapter 7

#8.00 CONT Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Civil Case CIVDS 1512462 Pending in San Bernardino Superior Court.

MOVANT: ED KALEFF, FATHER JOSEPH SHEA

From: 3/28/17, 4/4/17, 5/2/17

EH__

Docket 17

Tentative Ruling:

03/28/2017

The Movants seek relief to pursue a state court action against the Debtor and related parties. At minimum, the Movants must attach the complaint for the Court to examine any potential impacts the Complaint may have on the instant bankruptcy case.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Bingo Innovations of California, Inc.	Represented By Stuart G Steingraber
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Movant(s):

Ed Kalef, Father Joseph Shea	Pro Se
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Trustee(s):

Charles W Daff (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

6:16-21232 Alejandro Salinas, Jr.

Chapter 13

#9.00 CONT Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: (2013 GMC SIERRA Vin #
3GTP2WE70DG291523)

MOVANT: ALLY FINANCIAL INC

From: 4/25/17

EH__

Docket 25

*** VACATED *** REASON: ORDER ENTERED 5/2/17

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT relief from § 1301(a) co-debtor stay. GRANT request under ¶ 2.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Alejandro Salinas Jr.

Represented By
Nicholas M Wajda

Movant(s):

Ally Financial Inc.

Represented By
Adam N Barasch

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

CONT... Alejandro Salinas, Jr.

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

6:17-10489 John Scott Reynolds

Chapter 7

#10.00 CONT Motion for relief from automatic stay with supporting declarations
ACTION IN NON-BANKRUPTCY FORUM RE: Pending State Court Action:
Reynolds v. Reynolds IND 1300267, Superior Court County of Riverside (Indio
Branch)

MOVANT: JULIE REYNOLDS

From: 4/25/17

EH__

Docket 9

Tentative Ruling:

TENTATIVE RULING:

4/25/17

The extent of the relief requested by Movant is unclear. Outside of a motion for a protective order, which was scheduled to be heard in state court last week, there are only general references to the conclusion of the dissolution proceeding as well as "miscellaneous issues". Furthermore, there are technical issues with the motion: (1) Debtor was not properly served; (2) the motion requests retroactive annulment of the stay but provides no cause or declaration; and (3) the request for relief does not even request relief from the automatic stay. Finally, the Court agrees with the Trustee that issues regarding adjudication of property of the estate appropriately belong within the Bankruptcy Court. Given the technical issues and the fact that the motion is unclear what Movant is requesting, the Court is inclined to DENY the motion without prejudice.

APPEARANCES REQUIRED.

Party Information

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

CONT... John Scott Reynolds

Chapter 7

Debtor(s):

John Scott Reynolds

Represented By
Jenny L Doling

Movant(s):

Julie Ann Reynolds

Represented By
Paul M Stoddard

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

6:17-11657 Victor Balvaneda

Chapter 7

#11.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2013 NISSAN SENTRA, VIN #
3N1AB7AP5DL664132

MOVANT: NISSAN MOTOR ACCEPTANCE CORPORATION

EH__

Docket 24

Tentative Ruling:

05/16/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001
(a)(3) stay. DENY request for APO as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing,
the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Victor Balvaneda

Represented By
John F Brady

Movant(s):

NISSAN MOTOR ACCEPTANCE

Represented By
Michael D Vanlochem

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

6:17-12424 Levester Jackson and Janese Gilmore

Chapter 7

#12.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 14239 Purple Canyon Rd, Adelanto, CA

MOVANT: NATIONSTAR MORTGAGE LLC

EH__

Docket 9

Tentative Ruling:

05/16/2017
Service: Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Levester Jackson

Represented By
Todd L Turoci

Joint Debtor(s):

Janese Gilmore

Represented By
Todd L Turoci

Movant(s):

Nationstar Mortgage LLC

Represented By
Angie M Marth

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

CONT... Levester Jackson and Janese Gilmore

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

6:17-12626 Michael R. Lopez

Chapter 7

#13.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2015 MERCEDES-BENZ C300, VIN
55SWF4JB5FU073969

MOVANT: DAIMLER TRUST

EH__

Docket 9

Tentative Ruling:

05/16/2017
Service is Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing,
the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Michael R. Lopez

Represented By
Keith Q Nguyen

Movant(s):

Daimler Trust

Represented By
Sheryl K Ith

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

6:17-13360 Biani Berlenda Mora

Chapter 13

#14.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate: 12648 Casa Bonita Pl, Victorville CA 92392

MOVANT: BIANI BERLENDA MORA

EH__

Docket 10

Tentative Ruling:

05/16/17

The Debtor asserts that in the prior case she fell behind on payments due to a loss of social security income for her daughter. The I and J in the current case reflect a reduction. However, the declaration lacks specificity as to why the benefit was reduced. Additionally, although the Debtor also indicates she experienced "unexpected expenses" during the prior case, there is no explanation of what these expenses were, or how much they were, such that the Court cannot determine whether the expenses were incurred in good faith.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Biani Berlenda Mora

Represented By
Steven A Alpert

Movant(s):

Biani Berlenda Mora

Represented By
Steven A Alpert

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

6:17-13583 William J Schaefer and Jennifer L. Schaefer

Chapter 13

#15.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 33895 Wagon Train Drive, Wildomar, CA 2012 Ford Expedition

MOVANT: WILLIAM AND JENNIFER SCHAEFR

EH _____

Docket 17

Tentative Ruling:

05/16/17

In support of their Motion to Continue/Impose, the Debtors vaguely assert that their new budget will ensure that payments can be made on time to avoid the situation that occurred in the last case where they did not have funds to tender to the Trustee. However, the I & J have not changed at all from one case to the next, the Debtors' budget is extremely lean for a family of six, and there is otherwise no explanation of why the funds were not "received" on time in the last case. On the basis of the foregoing, the tentative ruling is to DENY the Motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

William J Schaefer

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Jennifer L. Schaefer

Represented By
Patricia M Ashcraft

Movant(s):

Jennifer L. Schaefer

Represented By
Patricia M Ashcraft

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

10:00 AM

CONT... William J Schaefer and Jennifer L. Schaefer

Chapter 13

William J Schaefer

Represented By
Patricia M Ashcraft

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 16, 2017

Hearing Room 303

2:00 PM

6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

Adv#: 6:17-01059 ASR Constructors Inc a California Corporation et a v. Gotte Electric, Inc. et

#16.00 Motion to Dismiss Adversary Proceeding

Also #17

EH _____

Docket 9

***** VACATED *** REASON: ORDER ENTERED 5/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

Defendant(s):

UNITED STATES OF AMERICA

Represented By
Charles Parker

Western Alliance Bank, an Arizona

Pro Se

Carlin Law Group APC

Pro Se

Bangerter Frazier & Graff PC

Represented By
Daniel P Wilde

Ledcor Construction, Inc., a

Represented By
Daniel P Scholz

Insurance Company Of The West

Represented By
Jennifer Leland
David B Shemano

Gotte Electric, Inc.

Pro Se

**United States Bankruptcy Court
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Riverside
Judge Mark Houle, Presiding
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Tuesday, May 16, 2017

Hearing Room 303

2:00 PM

CONT... ASR Constructors Inc a California Corporation Chapter 11

Employment Development Pro Se

Steven Schonder Pro Se

Angela Denise McKnight Pro Se

Movant(s):

UNITED STATES OF AMERICA Represented By
Charles Parker

Plaintiff(s):

Inland Machinery, Inc. Represented By
James C Bastian Jr

Another Meridian Company, LLC Represented By
James C Bastian Jr

ASR Constructors Inc a California Represented By
James C Bastian Jr

**United States Bankruptcy Court
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2:00 PM

6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

Adv#: 6:17-01059 ASR Constructors Inc a California Corporation et a v. Gotte Electric, Inc. et

#17.00 Status Conference RE: Complaint by ASR Constructors Inc a California Corporation, Another Meridian Company, LLC, Inland Machinery, Inc. against Gotte Electric, Inc., Insurance Company Of The West, Employment Development Department, Trico-Savi Business Park, L.P., a California limited partnership, Angela Denise McKnight, Cardlock Fuels Systems Inc., Steven Schonder, Western Alliance Bank, an Arizona corporation, UNITED STATES OF AMERICA, Carlin Law Group APC, Ledcor Construction, Inc., a Washington corporation, Bangerter Frazier & Graff PC. (Charge To Estate \$350.00). Nature of Suit: 02- Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

Also #16

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

Defendant(s):

UNITED STATES OF AMERICA

Represented By
Charles Parker

Western Alliance Bank, an Arizona

Pro Se

Carlin Law Group APC

Pro Se

Bangerter Frazier & Graff PC

Represented By

**United States Bankruptcy Court
Central District of California
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CONT... ASR Constructors Inc a California Corporation Chapter 11

Daniel P Wilde

Ledcor Construction, Inc., a

Represented By
Daniel P Scholz

Insurance Company Of The West

Represented By
Jennifer Leland
David B Shemano

Gotte Electric, Inc.

Pro Se

Employment Development

Pro Se

Steven Schonder

Pro Se

Angela Denise McKnight

Pro Se

Plaintiff(s):

Inland Machinery, Inc.

Represented By
James C Bastian Jr

Another Meridian Company, LLC

Represented By
James C Bastian Jr

ASR Constructors Inc a California

Represented By
James C Bastian Jr

**United States Bankruptcy Court
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6:16-19604 Sam Daniel Dason DDS,A Professional Dental Corpora

Chapter 11

#18.00 CONT Motion Regarding Chapter 11 First Day Motions Emergency Motion for Authority to (A) Use Cash Collateral on an Interim Basis Pending a Final Hearing and (B) Grant Replacement Liens

From: 11/2/16, 12/1/16, 1/24/17, 2/14/17,3/7/17

Also #19 & #20

EH__

Docket 4

***** VACATED *** REASON: ORDER ENTERED 5/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sam Daniel Dason DDS,A

Represented By
Michael S Kogan

Movant(s):

Sam Daniel Dason DDS,A

Represented By
Michael S Kogan
Michael S Kogan
Michael S Kogan
Michael S Kogan

**United States Bankruptcy Court
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Tuesday, May 16, 2017

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6:16-19604 Sam Daniel Dason DDS,A Professional Dental Corpora

Chapter 11

#19.00 CONT Disclosure Statement Describing Plan of Reorganization

From: 2/14/17, 3/7/17

Also #18 & #20

EH__

Docket 98

***** VACATED *** REASON: ORDER ENTERED 5/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sam Daniel Dason DDS,A

Represented By
Michael S Kogan

**United States Bankruptcy Court
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6:16-19604 Sam Daniel Dason DDS,A Professional Dental Corpora

Chapter 11

#20.00 CONT Order (1) Setting Scheduling Hearing And Case Management Conference And (2) Requiring Status Report re Post Confirmation Status Conference

From: 12/6/16, 1/24/17, 2/14/17,3/7/17

Also #18 & #19

EH__

Docket 13

***** VACATED *** REASON: ORDER ENTERED 5/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sam Daniel Dason DDS,A

Represented By
Michael S Kogan

**United States Bankruptcy Court
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6:16-19993 B & B Family, Incorporated

Chapter 11

#21.00 Approval of Disclosure Statement

EH _____

Docket 89

Tentative Ruling:

5/16/17

Background

On November 10, 2016 ("Petition Date"), B & B Family, Incorporated ("Debtor") filed a Chapter 11 voluntary petition. The Debtor is owned by Patricial Forte (who owns 50% of shares) and by Randall and Marianne Richey, husband and wife, who own the remaining 50% of shares in the Debtor (collectively, "Shareholders")

Debtor operates Oggi's Pizza and Brewing Company in Apple Valley, California. Debtor has fifty-five employees. The Debtor's Schedules show that it had approximately \$114,662.50 in assets as of the Petition Date. The Debtor's assets consist primarily of leased equipment, business licenses, and liquid assets in the form of cash and accounts.

On March 31, 2017, Debtor filed its Disclosure Statement and Chapter 11 Plan of Reorganization. On May 2, 2017, Comerica Bank filed a Limited Response to the Debtor's Disclosure Statement pointing simply to the Debtor's omission of its franchise agreement as an executory contract being assumed. In response, the Debtor amended its Disclosure Statement and Plan on May 2, 2017 (the "Amended DS and Plan"). Additionally, on May 3, 2017, the Debtor filed redline versions of the Amended DS and Plan reflecting the changes made since the March 31, 2017, filings.

Disclosure Statement & Plan

I. BASIC TERMS OF PLAN

The Chapter 11 Plan's proposed effective date is the first day of the first full month

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CONT... **B & B Family, Incorporated**

Chapter 11

after entry of the final order confirming plan (but no earlier than 8/01/17). Classes of claims are categorized as follows:

A. Claims Classification

1) *Administrative Claims:*

- UST Fees - \$4,875 (estimated), in full on effective date
- Turoci Firm - \$40,000 (estimated)/Terms: in full on effective date

2) *Priority Tax Claims:*

- IRS: \$5,251.48/ Terms: in full on effective date
- California BOE: \$125,750.40/Terms: 48 months, 7% interest, \$3,011.25/ mo.

3) *Class 1: Comerica Bank (Impaired)*

- Nature of lien: *first* priority security interest in all of Debtor's assets (D values at \$150,000)
- Claim: \$494,123.90
- Treatment: Bifurcated claim – Secured claim of \$150,000, Unsecured Claim of \$344,123.90
- Secured Claim Terms: 60 months, 6% interest, \$2,899.92/mo.
- Unsecured Claim treated with Class 6 GUCs

4) *Class 2: FC Marketplace aka Pioneer Park (Impaired)*

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CONT...

B & B Family, Incorporated

Chapter 11

- Nature of lien: *second* priority security interest in all Debtor's assets
- Unsecured claim of \$88,963.76
- Treatment: treated with Class 6 GUCs
- Plan proposes to avoid the lien of FC Marketplace on entry of confirmation order

5) Class 3: Oggi's Corporate (Impaired)

- Nature of lien: *third* priority lien in all Debtor's assets
- Unsecured claim of \$54,106.12
- Treatment: paid with Class 6 GUCs
- Plan proposes to avoid the lien of FC Marketplace on entry of confirmation order

6) Class 4: Financial Pacific Leasing

- Secured as to leased restaurant equipment which D values at \$2,000
- Secured Claim of \$2,000, Treatment: Paid in full on effective date (unimpaired)
- Unsecured Claim of \$42,864.40 (paid with class 6 GUCs) (impaired)
- Plan proposes to avoid the lien of FC Marketplace on entry of confirmation order

7) Class 5: High Desert Prime, LP (Impaired)

- Landlord

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CONT...

B & B Family, Incorporated

Chapter 11

- Debtor is assuming the lease and proposes to cure the arrears owed to landlord
- Claim: \$178,499.98
- Treatment: 48 months, 0% interest (per agreement with HDP), \$3,718.75/mo.

8) *Class 6: General Unsecured Creditors (Impaired)*

- Total Claims: \$636,718.69
- Dividend: 17% or \$120,000
- Treatment: \$1,000/mo. for first 48 months and \$6,000 for months 48-60
- Note: Pawnee lease for bar stools, dishwasher etc., will be rejected and Pawnee filed an unsecured claim and will be treated as such.

9) *Insiders/Equity Holders*

- No Insider Claims
- Equity to retain stock subject to Section VII (which provides potentially for new value although, if necessary)

B. Plan Funding

Debtor indicates it will have \$60,000 cash on hand on date of confirmation hearing (which Court presumes to mean the Effective Date).

Disposable income projection is \$11,000 for five years

C. Management

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CONT... B & B Family, Incorporated

Chapter 11

Patricia Forte (50% owner) is current President and will step down as President

Randall Richey will remain Secretary

Marianne Richey, current CFO will become President and CFO

D. Other Terms

D will be disbursing agent with no compensation unclaimed distributions to revert to reorganized Debtor.

Legal Analysis

A. Adequate Information

A Chapter 11 disclosure statement is required to contain "adequate information" pursuant to 11 U.S.C. § 1125(b). Section 1125(f)(2) provides that: "the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28." The United States Courts have devised a disclosure statement template for small businesses, Form B25B, which Debtor generally adopted as to format.

As to the substance of a disclosure statement, 11 U.S.C. § 1125(a)(1) defines "adequate information" 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, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor 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 and in determining

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Chapter 11

whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information

The type of information required varies with the circumstances. *See, e.g., In re Jeppson*, 66 B.R. 269, 292 (Bankr. D. Utah 1986) (listing nineteen categories of information commonly required); *see also In re Malek*, 35 B.R. 443, 443-44 (Bankr. E.D. Mich. 1983) (listing minimum requirements).

B. Plan Feasibility

"There are numerous decisions which hold that where a plan is on its face nonconfirmable, as a matter of law, it is appropriate for the court to deny approval of the disclosure statement describing the nonconfirmable plan." *In re Silberkraus*, 253 B.R. 890, 899 (Bankr. C.D. Cal. 2000) (collecting cases).

Here, the Debtor asserts that it needs a total of \$10,630 on a monthly basis to make plan payments and projects that after ordinary course expenses, it has a disposable income of approximately \$11,000 with which to make those payments.

ISSUES TO BE ADDRESSED AT HEARING ON APPROVAL OF DISCLOSURE STATEMENT

The Court has examined the Debtor's Amended DS and Plan to determine whether "adequate information has been provided and has identified the following issues to be addressed:

Minor Issues

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B & B Family, Incorporated

Chapter 11

- Page 6:9-15, reference to "Docket No. 88" should be changed to reference "Docket No. 98"
- In the Plan, where the Debtor describes Oggi's Corporate Debt, there appears to be a discrepancy regarding Oggi's Corporate's claim (i.e. \$54,106.12 is the "balance owed" but the Debtor in the next sentence proposes a \$88,963.76 allowed claim for this creditor)
- Patricia Forte is alternately referred to as "CEO" or as "President" in the DS and Plan. The Debtor should use terms consistently to avoid confusion.

Larger Issues (to be addressed at the hearing)

- The DS and Plan contemplate bifurcation of Comerica and FPL's claims and avoidance of remaining junior liens. However, the Docket does not reflect that any Motion to Value has yet been filed to determine the value of the collateral and notice to juniorlienholders that Debtor intends to avoid their liens on confirmation.
- There is currently no proposal for new value. Therefore, if Class 6 does not accept the plan, the Plan cannot be confirmed with Shareholders retaining any interest in the reorganized Debtor.
- Part 10, the Effect of Confirmation of Plan should clearly identify the lienholders whose liens shall be extinguished on confirmation of the Debtor's Plan.
- Part 9 is very lean on details regarding potential tax consequences on feasibility. Specifically, as to how Debtor determined the impact on feasibility, whether an accountant was consulted or otherwise how the Debtor is qualified to make a representation regarding the potential tax impact. Additionally, a question exists of the margin of potential increased tax liability.
- There is no evidence of the historical data referenced by Marianne Richey

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CONT...

B & B Family, Incorporated

Chapter 11

which is referenced in the DS declaration by which she estimated the projected figures.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

B & B Family, Incorporated

Represented By
Todd L Turoci

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6:17-10171 TNC, Inc.

Chapter 11

#22.00 Motion By United States Trustee To Dismiss Or Convert Chapter 11 Case

EH__

Docket 20

Tentative Ruling:

05/16/2017

BACKGROUND

On January 9, 2017 ("Petition Date"), TNC, Inc. ("Debtor") filed its petition for chapter 11 relief. The Debtor is a single real estate brokerage located in Ontario, CA. The owner of the Debtor is Nasim Ahmed who is the sole shareholder.

On April 20, 2017, the Office of the United States Trustee ("UST") filed a Motion to Dismiss or Convert Chapter 11 Case (the "Motion"). The Motion, though properly served, is unopposed.

The basis for the Motion is the assertion of the UST that the Debtor has failed to comply with its debtor-in-possession duties because it has failed to file any of the three monthly operating reports due since the Petition Date. Additionally, the UST asserts that the Debtor's general liability insurance has expired as of March 16, 2017.

DISCUSSION

Section 1112(b)(1) provides:

Except as provided in paragraph (2) and subsection (c), on request of a

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CONT...

TNC, Inc.

Chapter 11

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.

Section 1112(b)(4) sets forth a nonexhaustive list of what constitutes "cause" to convert or dismiss a case under § 1112(b)(1). *In re Consol. Pioneer Mortg. Entities*, 248 B.R. 368, 375 (9th Cir. BAP 2000), *aff'd*, 264 F.3d 803 (9th Cir. 2001). "The movant bears the burden of establishing by preponderance of the evidence that cause exists." *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 614 (9th Cir. BAP 2014) (citing *StellarOne Bank v. Lakewatch, LLC (In re Park)*, 436 B.R. 811, 815 (Bankr.W.D.Va.2010)).

If the bankruptcy court finds that cause exists to grant relief under § 1112(b)(1), it must then: "(1) decide whether dismissal, conversion, or the appointment of a trustee or examiner is in the best interest of creditors and the estate; and (2) identify whether there are unusual circumstances that establish that dismissal or conversion is not in the best interest of creditors and the estate." *In re Sullivan*, 522 B.R. at 612 (citing § 1112(b)(1), (b)(2), and *Shulkin Hutton, Inc., P.S. v. Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir.2009)). In choosing between dismissal or conversion, a bankruptcy court must consider the interests of all creditors. *Id.* (citing *In re Owens*, 552 F.3d at 961). "If cause is established, the decision whether to convert or dismiss the case falls within the sound discretion of the court." *Id.* (citing *Mitan v. Duval (In re Mitán)*, 573 F.3d 237, 247 (6th Cir. 2009) and *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (9th Cir. BAP2006)).

Here, the UST's asserted grounds for dismissal include the failure to comply with reporting requirements and the failure to maintain insurance which fall squarely within the list of items constituting "cause" to convert or dismiss: (1) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter, and (2) failure to maintain

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CONT...

TNC, Inc.

Chapter 11

appropriate insurance that poses a risk to the estate or to the public. 11 U.S.C. §§ 1112 (b)(4)(C) and (F). The UST has established cause. Moreover, as noted by the UST, the schedules do not reflect ownership of any real property or other significant assets. As such, it does not appear that liquidation would result in any benefit to creditors. For these reasons, the Court finds that dismissal is warranted. Finally, the Court notes that the Debtor has failed to oppose the Motion and deems its nonopposition as consent to the granting of the relief requested pursuant to LBR 9013-1(h).

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the Motion and DISMISS the Debtor's case.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

TNC, Inc.

Represented By
Stephen R Wade

Movant(s):

United States Trustee (RS)

Represented By
Mohammad Tehrani

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11:00 AM

6:13-27863 Ronald Leroy Stearns and Alicia Gay Stearns

Chapter 7

#1.00 Motion to Avoid Lien with Capitol One Bank USA NA

Also #2

EH ____

Docket 29

***** VACATED *** REASON: CONTINUED TO 5/31/17 AT 11:00 A.M.**

Party Information

Debtor(s):

Ronald Leroy Stearns

Represented By
John F Mansour

Joint Debtor(s):

Alicia Gay Stearns

Represented By
John F Mansour

Movant(s):

Ronald Leroy Stearns

Represented By
John F Mansour

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, May 17, 2017

Hearing Room 303

11:00 AM

6:13-27863 Ronald Leroy Stearns and Alicia Gay Stearns

Chapter 7

#2.00 Motion to Avoid Lien with Merchants Financial Gaurdian

Also #1

EH _____

Docket 30

***** VACATED *** REASON: CONTINUED TO 5/31/17 AT 11:00 A.M.**

Party Information

Debtor(s):

Ronald Leroy Stearns

Represented By
John F Mansour

Joint Debtor(s):

Alicia Gay Stearns

Represented By
John F Mansour

Movant(s):

Alicia Gay Stearns

Represented By
John F Mansour
John F Mansour

Ronald Leroy Stearns

Represented By
John F Mansour

Trustee(s):

Lynda T. Bui (TR)

Pro Se

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Hearing Room 303

11:00 AM

6:15-21418 James Lloyd Walker

Chapter 7

#3.00 Motion RE: Objection to Claim Number 1 by Claimant Real Time Resolutions, Inc

Also #4

EH__

Docket 70

***** VACATED *** REASON: CONTINUED TO 5/31/17 AT 11:00 AM**

Party Information

Debtor(s):

James Lloyd Walker

Pro Se

Movant(s):

Robert Whitmore (TR)

Represented By
Franklin C Adams

Trustee(s):

Robert Whitmore (TR)

Represented By
Franklin C Adams

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11:00 AM

6:15-21418 James Lloyd Walker

Chapter 7

#4.00 Motion RE: Objection to Claim Number 2 by Claimant Real Time Resolutions

Also #3

EH__

Docket 72

*** VACATED *** REASON: CONTINUED TO 5/31/17 AT 11:00 AM

Party Information

Debtor(s):

James Lloyd Walker

Pro Se

Movant(s):

Robert Whitmore (TR)

Represented By
Franklin C Adams

Trustee(s):

Robert Whitmore (TR)

Represented By
Franklin C Adams

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11:00 AM

6:16-17768 Dispatch Transportation LLC

Chapter 7

#5.00 CONT Motion for 2004 Examination -- Motion of USA Waste of California, Inc. for an Order Authorizing the Examination of Craig Johnson and the Issuance of Subpoenas Duces Tecum to Commodity Trucking Acquisition, LLC and Craig Johnson Pursuant to Fed.R. Bankr.P. 2004

FROM: 5/3/17

EH__

Docket 46

***** VACATED *** REASON: CONTINUED TO 5/31/17 AT 11:00 AM**

Party Information

Debtor(s):

Dispatch Transportation LLC

Represented By
Leonard M Shulman
Elyza P Eshaghi

Movant(s):

USA Waste of California, Inc.

Represented By
Paul J Laurin

Trustee(s):

Charles W Daff (TR)

Represented By
Toan B Chung

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11:00 AM

6:16-17769 Efren Diaz Estrada

Chapter 7

#6.00 CONT Motion to Convert Case From Chapter 7 to 13

From: 4/5/17

Also #7

EH__

Docket 33

***** VACATED *** REASON: CONTINUED TO 5/31/17 AT 11:00 AM**

Party Information

Debtor(s):

Efren Diaz Estrada

Represented By
W. Derek May

Movant(s):

Efren Diaz Estrada

Represented By
W. Derek May
W. Derek May
W. Derek May

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Brianna L Frazier
Rika Kido
Ryan D ODea

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11:00 AM

6:16-17769 Efred Diaz Estrada

Chapter 7

#7.00 Motion to Vacate Discharge to enable Conversion of Case to Chapter 13

Also #6

EH__

Docket 39

***** VACATED *** REASON: CONTINUED TO 5/31/17 AT 11:00 AM**

Party Information

Debtor(s):

Efred Diaz Estrada

Represented By
W. Derek May

Movant(s):

Efred Diaz Estrada

Represented By
W. Derek May
W. Derek May
W. Derek May

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Brianna L Frazier
Rika Kido
Ryan D ODea

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Wednesday, May 17, 2017

Hearing Room 303

11:00 AM

6:16-19150 Charles David Arthur and Claire Bigornia Blanza Arthur Chapter 7

#8.00 Chapter 7 Trustee's Motion for Order: (1) Authorizing the Short Sale of Real Property of the Estate Free and Clear of Liens Pursuant to Bankruptcy Code §§ 363(b) and (f); (2) Approving Payment of Real Estate Commission; & (3) Granting Related Relief

EH__

Docket 39

***** VACATED *** REASON: CONTINUED TO 5/31/17 AT 11:00 A.M.**

Party Information

Debtor(s):

Charles David Arthur

Represented By
Anerio V Altman

Joint Debtor(s):

Claire Bigornia Blanza Arthur

Represented By
Anerio V Altman

Movant(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Rika Kido

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Rika Kido

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2:00 PM

6:13-14986 David Wayne Wakefield

Chapter 7

Adv#: 6:13-01233 Continental East Fund IV, LLC v. Wakefield et al

#9.00 CONT Status Conference re: Adversary case 6:13-ap-01233. Complaint by Continental East Fund IV, LLC against David Wakefield, Elise Wakefield. false pretenses, false representation, actual fraud

From: 9/18/13. 2/12/14, 4/23/14, 8/20/14, 10/1/14, 10/22/14, 1/14/15, 2/18/15, 6/17/15, 8/26/15, 9/2/15, 11/18/15, 5/18/16, 5/25/16, 7/27/16, 1/11/17, 4/12/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 P.M.**

Party Information

Debtor(s):

David Wayne Wakefield

Represented By
Jordan Nils Bursch
Robert E Huttenhoff

Defendant(s):

Elise Wakefield

Represented By
Robert E Huttenhoff

David Wakefield

Represented By
Robert E Huttenhoff

Joint Debtor(s):

Elise Wakefield

Represented By
Jordan Nils Bursch
Robert E Huttenhoff

Plaintiff(s):

Continental East Fund IV, LLC

Represented By
Kyra E Andrassy
William A Floratos

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

CONT... David Wayne Wakefield

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Represented By
Alan W Forsley

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

6:13-17565 Bertrand Tenke Kengni

Chapter 7

Adv#: 6:15-01223 Frazer (TR) v. Kengni

#10.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01223. Complaint by Helen R. Frazer (TR) against Bertrand Tenke Kengni, Carisa Kengni. (Charge To Estate - \$350.00). Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h)))

From: 10/7/15, 2/3/16, 4/6/16, 6/29/16, 8/31/16, 12/14/16, 2/8/17, 4/26/17

EH__

Docket 1

*** VACATED *** REASON: JUDGMENT ENTERED 5/4/17

Party Information

Debtor(s):

Bertrand Tenke Kengni

Represented By
Terrence Fantauzzi

Defendant(s):

Carisa Kengni

Represented By
Kamola L Gray

Plaintiff(s):

Helen R. Frazer (TR)

Pro Se

Trustee(s):

Helen R. Frazer (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Adv#: 6:15-01304 Cisneros v. Kajan Mather & Barish, a professional corporation

#11.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01304. Complaint by A. Cisneros against Kajan Mather & Barish, a professional corporation, MATHER KUWADA, a limited liability partnership, MATHER LAW CORPORATION, a California corporation, LAW OFFICE OF KENNETH M. BARISH, Steven R. Mather, Kenneth M. Barish. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 1/13/16, 3/30/16, 4/6/16, 5/4/16, 5/25/16, 9/28/16, 11/2/16, 11/9/16, 12/14/16, 1/11/17

Also #12

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

Steven R. Mather

Pro Se

Kenneth M. Barish

Pro Se

MATHER LAW CORPORATION,

Represented By
Michael S Kogan

Kajan Mather & Barish, a

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

CONT... Douglas J Roger, MD, Inc., A Professional Corporat Chapter 7

Michael S Kogan

MATHER KUWADA, a limited

Represented By
Michael S Kogan

Plaintiff(s):

A. Cisneros

Represented By
D Edward Hays
Chad V Haes
Franklin R Fraley Jr
Sue-Ann L Tran
Jasmine W Wetherell

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Adv#: 6:15-01304 Cisneros v. Kajan Mather & Barish, a professional corporation

#12.00 Motion of Law Office of Kenneth M. Barish for Summary Judgment

Also #11

EH__

Docket 133

***** VACATED *** REASON: STIPULATION TO DISMISS**

DEFENDANT - LAW OFFICE OF KENNETH M. BARISH FILED 4/27/17

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

Steven R. Mather

Pro Se

Kenneth M. Barish

Pro Se

MATHER LAW CORPORATION,

Represented By
Michael S Kogan

Kajan Mather & Barish, a

Represented By
Michael S Kogan

MATHER KUWADA, a limited

Represented By
Michael S Kogan

Movant(s):

LAW OFFICE OF KENNETH M.

Pro Se

Plaintiff(s):

A. Cisneros

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

CONT... Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

D Edward Hays

Chad V Haes

Franklin R Fraley Jr

Sue-Ann L Tran

Jasmine W Wetherell

Trustee(s):

Arturo Cisneros (TR)

Represented By

Chad V Haes

D Edward Hays

Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#13.00 CONT Motion to Dismiss the Amended Counter-Claims Pursuant to Rule 12(b) of the Federal Rules of Civil Procedure

From: 4/26/17

Also #14 & #15

EH__

Docket 44

***** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

David A. Wood

Pro Se

Joanne Fraleigh

Represented By
George A Saba

Nabeel Naiem Slaieh

Represented By
George A Saba

Movant(s):

Mathew Grimshaw

Pro Se

Larry D Simons (TR)

Represented By
George A Saba
Matthew Grimshaw

D. Edward Hays

Pro Se

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

CONT... Nabeel Slaieh

Chapter 7

Marshack Hays LLP

Pro Se

D. Edward Hays

Represented By
George A Saba
Matthew Grimshaw

Larry D Simons (TR)

Pro Se

Marshack Hays LLP

Represented By
George A Saba
Matthew Grimshaw

Mathew Grimshaw

Represented By
George A Saba
Matthew Grimshaw

David Wood

Represented By
George A Saba
Matthew Grimshaw

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#14.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01224. Complaint by Larry D. Simons (TR) against Nabeel Naiem Slaieh, Joanne Fraleigh. (Charge To Estate \$350.00). Complaint for Avoidance and Recovery of Unauthorized Post-Petition Transfer (Attachments: # 1 Part 2 of 2 # 2 Adversary Proceeding Cover Sheet) Nature of Suit: (14 (Recovery of money/property - other))

From: 11/2/16, 2/1/17, 2/15/17, 4/26/17

Also #13 & #15

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

David A. Wood

Pro Se

Joanne Fraleigh

Represented By
George A Saba

Nabeel Naiem Slaieh

Represented By
George A Saba

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

CONT... Nabeel Slaieh

Chapter 7

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#15.00 CONT Status Conference RE: [39] Counterclaim by Nabeel Naiem Slaieh against Mathew Grimshaw, D. Edward Hays, Marshack Hays LLP, Larry D Simons (TR), David Wood

From: 4/26/17

Also #13 & #14

EH__

Docket 39

***** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

Joanne Fraleigh

Represented By
George A Saba

Nabeel Naiem Slaieh

Represented By
George A Saba

David A. Wood

Pro Se

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

CONT...

Nabeel Slaieh

David Wood
Matthew Grimshaw

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

6:14-17350 Dean L. Springer, Sr.

Chapter 7

Adv#: 6:16-01140 Simons v. Lindgren

#16.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01140. Complaint by Larry D Simons against Charles Lindgren (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))

From: 9/7/16, 12/7/16, 3/1/17, 4/12/17

Also #17

EH __

Docket 1

*** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 P.M.

Party Information

Debtor(s):

Dean L. Springer Sr. Pro Se

Defendant(s):

Charles Lindgren Pro Se

Joint Debtor(s):

Tami Jo Springer Pro Se

Plaintiff(s):

Larry D Simons Represented By
Sarah Cate Hays
D Edward Hays

Trustee(s):

Larry D Simons (TR) Represented By
Richard A Marshack
Sarah Cate Hays

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

CONT...

Dean L. Springer, Sr.

D Edward Hays

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

6:14-17350 Dean L. Springer, Sr.
Adv#: 6:16-01140 Simons v. Lindgren

Chapter 7

#17.00 CONT Motion for Entry of Default Judgment

From: 4/12/17

Also #16

EH__

Docket 14

*** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 P.M.

Party Information

Debtor(s):

Dean L. Springer Sr. Pro Se

Defendant(s):

Charles Lindgren Pro Se

Joint Debtor(s):

Tami Jo Springer Pro Se

Movant(s):

Larry D Simons Represented By
Sarah Cate Hays
D Edward Hays

Plaintiff(s):

Larry D Simons Represented By
Sarah Cate Hays
D Edward Hays

Trustee(s):

Larry D Simons (TR) Represented By
Richard A Marshack

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

CONT...

Dean L. Springer, Sr.

Sarah Cate Hays
D Edward Hays

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

6:16-12900 Richard G Rothman

Chapter 7

Adv#: 6:16-01170 California Solar Thermal, Inc. v. Rothman

#18.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01170. Complaint by California Solar Thermal, Inc. against Richard G Rothman. Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)

From: 9/7/16, 1/11/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Richard G Rothman

Represented By
Daniel J Winfree

Defendant(s):

Richard G Rothman

Represented By
Daniel J Winfree

Joint Debtor(s):

Shari A Randall

Represented By
Daniel J Winfree

Plaintiff(s):

California Solar Thermal, Inc.

Represented By
Douglas A Plazak

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

6:16-13311 Jose Antonio Hernandez
Adv#: 6:16-01176 Simons v. Navarro

Chapter 7

#19.00 CONT Status Conference RE: Complaint to Avoid and Recover Fraudulent Transfer

From: 9/7/16, 11/9/16, 1/11/17, 3/8/17, 4/12/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Jose Antonio Hernandez

Represented By
Jessica De Anda Leon

Defendant(s):

Carolina Villalobos Navarro

Represented By
Christopher J Langley

Plaintiff(s):

Larry D Simons

Represented By
Frank X Ruggier

Trustee(s):

Larry D Simons (TR)

Represented By
Frank X Ruggier

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

6:16-19799 Jaison Vally Surace

Chapter 7

Adv#: 6:16-01295 Abbasi v. Surace et al

#20.00 CONT Status Conference Re: Complaint by Setareh Abbasi, Bruce Dannemeyer, Jaison Vally Surace against Jaison Vally Surace, Walie Qadir, Marym Qadir. false pretenses, false representation, actual fraud, 67 - Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 13 - Recovery of money/property - 548 fraudulent transfer, 91 - Declaratory judgment, 02 - Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

From: 2/15/17

EH__

Docket 1

*** VACATED *** **REASON: CONTINUED TO 6/7/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Defendant(s):

Marym Qadir

Represented By
Batkhand Zoljargal

Walie Qadir

Represented By
Batkhand Zoljargal

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Plaintiff(s):

Setareh Abbasi

Represented By
Bruce Dannemeyer
Bruce Dannemeyer

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

CONT... Jaison Vally Surace

Chapter 7

Trustee(s):

John P Pringle (TR)

Represented By
Todd A Frealy
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 17, 2017

Hearing Room 303

2:00 PM

6:16-20927 Mee Soon Kim

Chapter 7

Adv#: 6:17-01064 Jabro v. Kim et al

#21.00 Status Conference Re: Complaint by Hikmat Jabro against Mee Soon Kim , Tae Young Kim . (14 (Recovery of money/property - other))

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Mee Soon Kim

Represented By
Minh Duy Nguyen

Defendant(s):

Tae Young Kim

Pro Se

Mee Soon Kim

Pro Se

Plaintiff(s):

Hikmat Jabro

Represented By
Michael H Jabro

Trustee(s):

Larry D Simons (TR)

Represented By
David Seror
Michael W Davis

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 18, 2017

Hearing Room 303

11:00 AM

6:17-13853 Malik Muhammad Asif and Zobia Asif

Chapter 11

#1.00 Motion for Order Authorizing Interim Use of Cash Collateral

Also #1.1

EH__

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Malik Muhammad Asif

Represented By
Todd L Turoci

Joint Debtor(s):

Zobia Asif

Represented By
Todd L Turoci

Movant(s):

Zobia Asif

Represented By
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci

Malik Muhammad Asif

Represented By
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 18, 2017

Hearing Room 303

11:00 AM

6:17-13853 Malik Muhammad Asif and Zobia Asif

Chapter 11

#1.10 Motion in Individual Ch 11 Case for Order Authorizing Payment of Prepetition Payroll and to Honor Prepetition Employment Procedures (LBR 2081-1(a)(6)) on Emergency Notice

Also #1

EH__

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Malik Muhammad Asif

Represented By
Todd L Turoci

Joint Debtor(s):

Zobia Asif

Represented By
Todd L Turoci

Movant(s):

Zobia Asif

Represented By
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci

Malik Muhammad Asif

Represented By
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 18, 2017

Hearing Room 303

12:30 PM

6:15-13354 Jeffrey Michael Berger and Debra Lynn Berger

Chapter 13

#1.20 CONT Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan

From: 4/27/17, 5/11/17

EH _____

Docket 37

***** VACATED *** REASON: ORDER ENTERED 5/15/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey Michael Berger

Represented By
Jenny L Doling

Joint Debtor(s):

Debra Lynn Berger

Represented By
Jenny L Doling

Movant(s):

Debra Lynn Berger

Represented By
Jenny L Doling
Jenny L Doling

Jeffrey Michael Berger

Represented By
Jenny L Doling
Jenny L Doling
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 18, 2017

Hearing Room 303

12:30 PM

6:16-19429 Patricia Morales

Chapter 13

#2.00 Motion to vacate Dismissal Pursuant to F.R.B.P sect 60(b)

EH__

Docket 57

Tentative Ruling:

5/18/17

BACKGROUND

On October 24, 2016, Patricia Morales ("Debtor") filed a Chapter 13 voluntary petition. On January 24, 2017, Debtor's Chapter 13 plan was confirmed.

On April 3, 2017, Trustee's motion to dismiss was granted after no opposition was properly filed. On April 6, 2017, Debtor filed a motion to vacate dismissal (the "First Motion"). Trustee filed his disapproval on April 10, 2017. On April 21, 2017, Debtor filed a late reply that was not served

The Court posted a tentative prior to the hearing on April 27, 2017, that outlined a variety of technical and substantive deficiencies, both legal and factual. At the hearing, Debtor's counsel withdrew the motion. On May 5, 2017, Debtor filed a new motion to vacate dismissal (the "Second Motion").

DISCUSSION

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 18, 2017

Hearing Room 303

12:30 PM

CONT... Patricia Morales

Chapter 13

While the Court notes that Debtor appears to have made some attempt to remedy the deficiencies noted in the Court's previous tentative ruling, the Second Motion still contains significant technical and substantive deficiencies, both legal and factual.

First of all, service of the Second Motion is improper. Debtor's service list abruptly cuts off at the letter "L" (creditors listed in alphabetical order).

Second of all, the Second Motion was not calendared and noticed correctly. The motion was set on "regular notice" but Debtor only provided thirteen days notice of the hearing. This is especially concerning because the reason the case was dismissed was because Debtor's opposition to the motion to dismiss was calendared incorrectly.

Third, the Second Motion contains the same general factual deficiencies as the First Motion. Once again, Debtor identifies her failure to file a responsive pleading to Trustee's motion for dismissal as the act to which a 60(b) analysis applies. As the Court noted in its previous tentative, however, Debtor did file an opposition to that motion, but a hearing was not set because Debtor selected incorrect hearing information. Yet, Debtor has opted to include the same assertions in the Second Motion.

Fourth, the majority of Debtor's motion discusses the payment history of Debtor, Debtor's account of which was disputed by Trustee in his opposition to the First Motion. Once again, the exhibits included are not authenticated. Additionally, the Second Motion removes the declaration of Debtor. Instead, in its place, is a declaration of Debtor's counsel, which is simply a verbatim copy of the motion, and otherwise lacks foundation and personal knowledge.

Fifth, while the Second Motion appears to make an attempt to remedy the legal deficiencies of the First Motion, that attempt is inadequate. While the Second Motion, unlike the First Motion, does identify the appropriate legal standard, it is still far from adequate. The motion appears to include two statements that could be characterized as legal, and that are relevant in this matter. The first sentence states: "[T]he court has

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, May 18, 2017

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12:30 PM

CONT... Patricia Morales

Chapter 13

the authority to grant the relief sought herein pursuant F.R.C.P. 60(b) States: (1) Mistake, inadvertence, surprise, or excusable neglect." The second statement, which occurs before the first, states: "Debtor respectfully requests the court to vacate dismissal and reinstate the bankruptcy case on the following grounds that the reason for her failure to file a responsive opposition to the motion to dismiss was excusable."

Regarding the first sentence, apart from the fact that it is clearly not a sentence, the motion contains no further discussion of the legal standard or how to apply 60(b) to the facts of this case. Regarding the second sentence, apart from the fact that it is grammatically defective, the Court notes, once again, that Debtor did file an opposition to Trustee's motion to dismiss. The second sentence simply misrepresents the record and lacks credibility.

Debtor's previous four filings in this case (the Second Motion, the First Motion and Debtor's reply, and the opposition to Trustee's motion to dismiss) contain numerous technical and substantive deficiencies, are far from legally adequate, and are factually inaccurate. Multiple filings were noticed incorrectly and multiple filings were served incorrectly. More importantly, despite the fact the Court posted a tentative that informed Debtor why the First Motion was inadequate, Debtor has, for the most part, repeated the deficiencies in the Second Motion. The two sentences outlined above appear to constitute the steps taken to respond to the Court's tentative, and those two sentences are simply inadequate.

Tentative Ruling:

For the foregoing reasons, the Court is inclined to CONTINUE the hearing for movant to file/serve amended pleadings and to coincide with a hearing on an order to show cause why Movant's counsel should not be sanctioned.

APPEARANCES REQUIRED.

Party Information

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 18, 2017

Hearing Room 303

12:30 PM

CONT... Patricia Morales

Chapter 13

Debtor(s):

Patricia Morales

Represented By
Michael C Maddux

Movant(s):

Patricia Morales

Represented By
Michael C Maddux

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 18, 2017

Hearing Room 303

12:30 PM

6:17-11083 Daniel S Neesan

Chapter 13

#3.00 CONT Confirmation of Chapter 13 Plan

From: 3/30/17, 4/27/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel S Neesan

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, May 18, 2017

Hearing Room 303

12:30 PM

6:17-11182 Renard Louis Hamilton and Regina Elizabeth Hamilton

Chapter 13

#4.00 Motion RE: Objection to Claim Number 6 by Claimant Internal Revenue Services

Also #5

EH__

Docket 21

Tentative Ruling:

5/18/17

Background:

On February 16, 2016, Renard & Regina Hamilton ("Debtors") filed a Chapter 13 voluntary petition. On March 22, 2017, the IRS filed a claim ("Claim 6") in the amount of \$42,251.29, of which \$15,231.25 was identified as a priority claim. On April 19, 2017, Debtors filed an objection to Claim 6.

The claim of the IRS is based on Debtors' failure to file tax returns for 2012-2016. Debtors state that they filed the relevant returns on March 17, 2017. The docketed claim objection does not include an exhibit demonstrating that the returns were filed, although Debtors state that the Trustee's copy and the Judge's copy contain such an exhibit.

Applicable Law:

**United States Bankruptcy Court
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CONT... Renard Louis Hamilton and Regina Elizabeth Hamilton

Chapter 13

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. See *In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. See *Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

The evidence submitted by Debtors in support of their motion was not properly filed. Fed. R. Bankr. P. Rule 5005 governs the filing and transmittal of papers and generally requires that a filing be made with the clerk. Rule 5005(a) provides an exception to

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Chapter 13

allow a party to file a paper with a bankruptcy judge, but it is a discretionary exception, which is not appropriate here.

11 U.S.C. § 107 provides a mechanism whereby filings can be made under seal. That approach was not adopted in this case. As a result, the motion that is part of the record does not contain sufficient evidence to comply with Local Rule 3007-(1).

Finally, the notice to the IRS at the address in Philadelphia is addressed to T. Smith, but, as the proof of claim indicates, that person's address is in San Diego.

Tentative Ruling

The Court is inclined to OVERRULE the objection without prejudice to Debtors re-filing the claim objection with proper evidence and utilizing the appropriate steps to protect Debtors' sensitive information, and for proper service.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Renard Louis Hamilton

Represented By
D Justin Harelik

Joint Debtor(s):

Regina Elizabeth Hamilton

Represented By
D Justin Harelik

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CONT... Renard Louis Hamilton and Regina Elizabeth Hamilton

Chapter 13

Movant(s):

Regina Elizabeth Hamilton

Represented By
D Justin Harelik

Renard Louis Hamilton

Represented By
D Justin Harelik

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-11182 Renard Louis Hamilton and Regina Elizabeth Hamilton

Chapter 13

#5.00 CONT Confirmation of Chapter 13 Plan

From: 3/30/17, 4/6/17, 5/4/17

Also #4

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Renard Louis Hamilton

Represented By
D Justin Harelik

Joint Debtor(s):

Regina Elizabeth Hamilton

Represented By
D Justin Harelik

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-11551 Priscilla Yvonne Bavadi

Chapter 13

#6.00 Motion to set aside RE: Dismissal

EH__

Docket 18

Tentative Ruling:

5/18/17

BACKGROUND

On March 1, 2017, Priscilla Bavadi ("Debtor") filed a Chapter 13 voluntary petition. This was Debtor's sixth bankruptcy filing in eighteen months. Of the previous five, four were dismissed either for failure to file information or at the confirmation hearing. One result in a confirmed plan, however, the case was dismissed after the fifth month for failure to make plan payments. William Radcliffe ("Counsel") served as Debtor's attorney in all but the first filing.

On April 6, 2017, the Court held a confirmation hearing. The case was dismissed with a 180-day bar due to Debtor's failure to attend the meeting of creditors.

On April 13, 2017, Debtor filed a motion to vacate dismissal. On April 14, 2017, Trustee filed his objection to the motion.

Debtor's motion contains no legal analysis. It is limited to a declaration of Debtor stating that she did not attend the meeting of creditors because she believed the meeting was on April 12, 2017. It is true that when the case was originally filed it was assigned to Judge Johnson, and the date for the meeting of creditors was April 12,

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2017, but immediately thereafter, the case was transferred to Judge Houle due to prior involvement with the Debtor, and the meeting of creditors was set for April 6, 2017. This assignment occurred the same day of the filing – in fact, the only meeting of creditors’ date noticed was April 6, 2017.

DISCUSSION

Fed. R. Bankr. P. Rule 9024 incorporates Fed. R. Civ. P. Rule 60. Fed. R. Civ. P. Rule 60(b) provides the grounds for relief from a final judgment. In general:

Fed. R. Civ. P. 60(b) seeks to balance the interest in the stability of judgments and orders with the interest in seeing they do not become instruments of oppression and fraud. Hence, the court may relieve a party . . . from a final judgment, order, or proceedings for . . . mistake, inadvertence, surprise, or excusable neglect. Relief under Rule 60(b) is extraordinary in nature and motions invoking that rule should be granted sparingly.

In re Teran Racamonde, 526 B.R. 89, 91 (Bankr. D.P.R. 2015). Here, Debtor has not cited any legal provision or indicated what provision she believes is applicable. The only factual argument made is that Debtor failed to attend the meeting of creditors because she noted the wrong date due to the judicial reassignment.

The Court finds Debtor’s proffered reason to be insufficient for the following reasons: (1) the meeting of creditors was changed less than two hours after the commencement of the bankruptcy; (2) the only notice sent regarding the meeting of creditors identified a date of April 6, 2016; (3) Debtor is familiar with the Court’s procedure of transferring cases to a judge who was previously involved – in each of Debtor’s two previous filings such a reassignment occurred; (4) Debtor has cited no legal provision and made no legal argument; and (5) Debtor’s indication that she believes the foreclosure would be set aside through the reinstatement of a bankruptcy case in which the automatic stay was not in effect lacks credibility. Furthermore, Debtor’s previous bankruptcy filings demonstrate a consistent lack of willingness or ability to

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CONT... **Priscilla Yvonne Bavadi**
abide by the bankruptcy laws and rules.

Chapter 13

TENTATIVE RULING

The Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Priscilla Yvonne Bavadi

Represented By
William Radcliffe

Movant(s):

Priscilla Yvonne Bavadi

Represented By
William Radcliffe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-11658 Maisha Lenette Ghant-Elie

Chapter 13

#7.00 CONT Confirmation of Chapter 13 Plan

From: 4/6/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maisha Lenette Ghant-Elie

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-11800 Veronica Salinas

Chapter 13

#8.00 CONT Confirmation of Chapter 13 Plan

From: 4/27/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Veronica Salinas

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:17-11922 Hermilo Saavedra

Chapter 13

#9.00 CONT Confirmation of Chapter 13 Plan

From: 4/27/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hermilo Saavedra

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-11955 Robert James Budzinski

Chapter 13

#10.00 CONT Confirmation of Chapter 13 Plan

From: 4/27/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert James Budzinski

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:17-12936 Jose J Sandoval

Chapter 13

#11.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

***** VACATED *** REASON: CASE DISMISSED 4/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose J Sandoval

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-12942 Raul M Sosa

Chapter 13

#12.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

*** VACATED *** REASON: CASE DISMISSED 4/28/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raul M Sosa

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-13006 Brenda Joelle Rue

Chapter 13

#13.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brenda Joelle Rue

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:17-13007 Donaldo Montiel

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donaldo Montiel

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
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12:30 PM

6:17-13008 Shane Morgan

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

*** VACATED *** REASON: CASE DISMISSED 5/16/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shane Morgan

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-13037 Robert P Guerrero, Jr.

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert P Guerrero Jr.

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-13063 Ethel N Odimegwu

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ethel N Odimegwu

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-13072 Ricardo Menendez

Chapter 13

#18.00 CONT Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 245 South Iris Street San Bernardino CA 92410

MOVANT: RICARDO MENENDEZ

From: 5/9/17

Also #19

EH__

Docket 13

Tentative Ruling:

5/9/17

Movant having provided sufficient evidence to rebut the presumption that the case was not filed in good faith, the Court is inclined to GRANT the motion and continue the automatic stay as to all creditors.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ricardo Menendez

Represented By
Sunita N Sood

Movant(s):

Ricardo Menendez

Represented By
Sunita N Sood

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-13072 Ricardo Menendez

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

Also #18

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricardo Menendez

Represented By
Sunita N Sood

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-13091 Kristin Lynn Robles

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kristin Lynn Robles

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-13095 Isabel M Gutierrez

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Isabel M Gutierrez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, May 18, 2017

Hearing Room 303

12:30 PM

6:17-13583 William J Schaefer and Jennifer L. Schaefer

Chapter 13

#21.10 CONT Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 33895 Wagon Train Drive, Wildomar, CA 2012 Ford Expedition

MOVANT: WILLIAM AND JENNIFER SCHAEFR

From: 5/16/17

EH _____

Docket 17

Tentative Ruling:

05/16/17

In support of their Motion to Continue/Impose, the Debtors vaguely assert that their new budget will ensure that payments can be made on time to avoid the situation that occurred in the last case where they did not have funds to tender to the Trustee. However, the I & J have not changed at all from one case to the next, the Debtors' budget is extremely lean for a family of six, and there is otherwise no explanation of why the funds were not "received" on time in the last case. On the basis of the foregoing, the tentative ruling is to DENY the Motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

William J Schaefer

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Jennifer L. Schaefer

Represented By
Patricia M Ashcraft

**United States Bankruptcy Court
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CONT... William J Schaefer and Jennifer L. Schaefer

Chapter 13

Movant(s):

Jennifer L. Schaefer

Represented By
Patricia M Ashcraft

William J Schaefer

Represented By
Patricia M Ashcraft

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, May 18, 2017

Hearing Room 303

12:30 PM

6:17-13360 Biani Berlenda Mora

Chapter 13

#21.20 CONT Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate: 12648 Casa Bonita Pl, Victorville CA 92392

MOVANT: BIANI BERLENDA MORA

From: 5/16/17

EH__

Docket 10

Tentative Ruling:

05/16/17

The Debtor asserts that in the prior case she fell behind on payments due to a loss of social security income for her daughter. The I and J in the current case reflect a reduction. However, the declaration lacks specificity as to why the benefit was reduced. Additionally, although the Debtor also indicates she experienced "unexpected expenses" during the prior case, there is no explanation of what these expenses were, or how much they were, such that the Court cannot determine whether the expenses were incurred in good faith.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Biani Berlenda Mora

Represented By
Steven A Alpert

Movant(s):

Biani Berlenda Mora

Represented By
Steven A Alpert

**United States Bankruptcy Court
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CONT... Biani Berlenda Mora

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, May 18, 2017

Hearing Room 303

12:31 PM

6:13-10251 Brandon Kent Blevins and Teresa Taylor Blevins

Chapter 13

#22.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 200

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brandon Kent Blevins

Represented By
Raj T Wadhvani

Joint Debtor(s):

Teresa Taylor Blevins

Represented By
Raj T Wadhvani

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, May 18, 2017

Hearing Room 303

12:31 PM

6:13-11372 Ernest B Galante and Susan D Galante

Chapter 13

#23.00 CONT Trustee's Motion to Dismiss Case

From: 3/23/17, 4/27/17

EH__

Docket 116

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ernest B Galante

Represented By
Dale Parham - INACTIVE -
Michael Smith

Joint Debtor(s):

Susan D Galante

Represented By
Dale Parham - INACTIVE -
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, May 18, 2017

Hearing Room 303

12:31 PM

6:13-17553 Kenneth Vernell Hawkins and Brenda A Hawkins

Chapter 13

#24.00 CONT Trustee's Motion to Dismiss Case

From: 3/23/17, 4/27/17, 5/11/17

EH__

Docket 97

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth Vernell Hawkins

Represented By
Craig J Beauchamp

Joint Debtor(s):

Brenda A Hawkins

Represented By
Craig J Beauchamp

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
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Thursday, May 18, 2017

Hearing Room 303

12:31 PM

6:14-12676 Jimmie Lee Bracy, Jr.

Chapter 13

#25.00 Trustee's Motion to Dismiss Case

EH _____

Docket 118

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jimmie Lee Bracy Jr.

Represented By
Gregory M Shanfeld

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, May 18, 2017

Hearing Room 303

12:31 PM

6:14-23388 Jose N Recinos and Patricia Recinos

Chapter 13

#26.00 CONT Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

From: 4/27/17, 5/4/17

EH__

Docket 207

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose N Recinos

Represented By
Michael Smith

Joint Debtor(s):

Patricia Recinos

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, May 18, 2017

Hearing Room 303

12:31 PM

6:16-15522 Jesus Danny Ontiveros, III and Marie Irene Ontiveros

Chapter 13

#27.00 CONT Trustee's Motion to Dismiss Case

From: 4/27/17, 5/4/17

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus Danny Ontiveros III

Represented By
Gary S Saunders

Joint Debtor(s):

Marie Irene Ontiveros

Represented By
Gary S Saunders

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, May 18, 2017

Hearing Room 303

12:31 PM

6:16-16110 Peter J. Giummo

Chapter 13

#28.00 Trustee's Motion to Dismiss Case

EH __

Docket 43

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peter J. Giummo

Represented By
Bruce D White

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, May 18, 2017

Hearing Room 303

12:31 PM

6:16-19668 Christina M Starr

Chapter 13

#29.00 Trustee's Motion to Dismiss Case

EH__

Docket 45

*** VACATED *** REASON: CASE DISMISSED 5/4/17

Tentative Ruling:

ntc of hrg fld 4/11/17

Party Information

Debtor(s):

Christina M Starr

Represented By
Aaron Lloyd

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, May 18, 2017

Hearing Room 303

12:31 PM

6:16-20044 Charles Mickey Alligood

Chapter 13

#30.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/2/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Mickey Alligood

Represented By
Neil R Hedtke

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:13-12718 Thomas Arce

Chapter 13

#1.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2295 College Avenue, San Bernardino, California 92407

MOVANT: JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

EH__

Docket 65

Tentative Ruling:

5/30/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under § 1301(a). GRANT requests under ¶¶ 2 and 3. DENY alternative request under ¶ 13 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Thomas Arce

Represented By
David Lozano

Movant(s):

JPMorgan Chase Bank, National

Represented By
Jared D Bissell
Terrionta K Levells
Karon D Horn
Delesia Graham

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

CONT... Thomas Arce

Joseph C Delmotte

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:14-16672 Nicole Reyes

Chapter 13

#2.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 15765 Bluechip Circle, Moreno Valley, CA

MOVANT: WILMINGTON SAVINGS FUND SOCIETY FSB dba CHRISTIANA TRUST

EH__

Docket 130

***** VACATED *** REASON: CASE DISMISSED 5/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nicole Reyes

Represented By
Steven A Alpert

Movant(s):

Wilmington Savings Fund Society,

Represented By
Megan E Lees

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:14-24083 Frederick Arnett Mikel

Chapter 13

#3.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 16290 Avenida De Loring, Moreno Valley, CA 92551

MOVANT: U.S. BANK NATIONAL ASSOCIATION

From: 4/11/17, 5/9/17

EH__

Docket 103

Tentative Ruling:

04/11/17
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). Request under § 362(d)(2) is DENIED for failure by Movant to establish that the Property has no equity or that it is not necessary for reorganization. GRANT waiver of 4001(a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Frederick Arnett Mikel

Represented By
Todd L Turoci

Movant(s):

U.S. BANK NATIONAL

Represented By
April Harriott
Sean C Ferry

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

CONT... Frederick Arnett Mikel

Chapter 13

Matthew R. Clark
Keith Labell

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:15-18942 Genaro Flores and Salome Flores

Chapter 13

#4.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 18138 Laguna Place, Fontana, CA 92336

MOVANT: BAYVIEW LOAN SERVICING LLC

EH__

Docket 62

***** VACATED *** REASON: ORDER ENTERED 5/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Genaro Flores

Represented By
Luis G Torres

Joint Debtor(s):

Salome Flores

Represented By
Luis G Torres

Movant(s):

BAYVIEW LOAN SERVICING,

Represented By
Erin M McCartney

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:15-21076 Guillermo Jorge Fitzmaurice and Emilia Fitzmaurice

Chapter 13

#5.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 13372 Gettysburg St, Fontana, CA 92336

MOVANT: WVMF FUNDING LLC

EH _____

Docket 41

Tentative Ruling:

5/30/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3 and 12.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Guillermo Jorge Fitzmaurice

Represented By
Ronald W Ask

Joint Debtor(s):

Emilia Fitzmaurice

Represented By
Ronald W Ask

Movant(s):

WVMF Funding, LLC

Represented By
Kristin A Zilberstein

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

CONT... Guillermo Jorge Fitzmaurice and Emilia Fitzmaurice

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:16-11745 Alfredo Manzo Arrieta and Mayte Hernandez- Arrieta

Chapter 13

#6.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 4057 East Hamilton Paseo, Ontario, CA 91761

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 98

Tentative Ruling:

5/30/2017

Service is Proper

Opposition: Yes

Parties to advise Court regarding adequate protection discussions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Alfredo Manzo Arrieta

Represented By
Andy C Warshaw

Joint Debtor(s):

Mayte Hernandez- Arrieta

Represented By
Andy C Warshaw

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

CONT... Alfredo Manzo Arrieta and Mayte Hernandez- Arrieta

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:16-12900 Richard G Rothman and Shari A Randall

Chapter 7

#7.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 79406 Calle Palmeto, La Quinta, CA 92253

MOVANT: DEUTSCHE BANK NATIONAL TRUST COMPANY

EH__

Docket 74

Tentative Ruling:

5/30/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (d) (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 13 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Richard G Rothman

Represented By
Daniel J Winfree

Joint Debtor(s):

Shari A Randall

Represented By
Daniel J Winfree

Movant(s):

Deutsche Bank National Trust

Represented By
Sean C Ferry

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

CONT... Richard G Rothman and Shari A Randall

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:16-12986 Efren Rubio

Chapter 13

#8.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 764 Allepo Pine St, Perris, CA 92571

MOVANT: THE BANK OF NEW YORK MELLON fka THE BANK OF NEW
YORK AS TRUSTEE FOR THE CERTIFICATE HOLDERS OF THE CWABS

From: 4/25/17

EH__

Docket 47

***** VACATED *** REASON: ORDER ENTERED 5/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Efren Rubio

Represented By
Inez Tinoco-Vaca

Movant(s):

The Bank of New York Mellon fka

Represented By
Erin M McCartney

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:16-18319 YBF Tax, Inc.

Chapter 7

#9.00 Motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Rosa Bryant v YBF Tax Inc et al; CIV DS1504314; Pending: Superior Court of CA San Bernardino Court

MOVANT: ROSA BRYANT

EH__

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

YBF Tax, Inc.

Represented By
Ronald W Ask

Movant(s):

Rosa Bryant

Represented By
Michael F Chekian

Trustee(s):

Karl T Anderson (TR)

Represented By
Lovee D Sarenas

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:16-19962 Fonda Cormier

Chapter 13

#10.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 15632 Dobbs Peak Lane Fontana CA 92336

MOVANT: CREDITOR TRINITY FINANCIAL SERVICES

EH__.

Docket 25

Tentative Ruling:

5/30/2017

Service is Improper

Opposition: None

The Court is inclined to CONTINUE the hearing for service on Debtor pursuant to Local Rule 4001-(1)(c)(C)(i).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Fonda Cormier

Represented By
Phillip Myer

Movant(s):

Trinity Financial Services LLC

Represented By
Henry D Paloci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:16-20926 Mario Mondragon

Chapter 13

#11.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HARLEY-DAVIDSON FLHX STREET GLIDE, VIN:1HD1KBM34GB657007

MOVANT: HARLEY-DAVIDSON CREDIT CORP

EH _____

Docket 20

Tentative Ruling:

5/30/2017

Service is Proper
Opposition: Limited

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 12. Alternative request under ¶ 11 is denied as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Mario Mondragon

Represented By
Michael Smith

Movant(s):

Harley-Davidson Credit Corp

Represented By
Tyneia Merritt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:17-11670 AMANDO MORALES and ALICIA MALDONADO

Chapter 7

#12.00 Motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Real Property

MOVANT: MARTHA E GUERRERO AND EDUARDO E GUERRERO

FROM: 4/25/17

EH__

Docket 11

Tentative Ruling:

5/30/17

Debtor's opposition argues that the real estate contract is an executory contract that can be rejected in bankruptcy. While providing an applicable citation for that assertion, Debtor does not apply the legal standard to the facts of this case.

Nevertheless, it appears that Debtor's characterization of the contract as "executory" may have merit. While Movant, in the motion, states that "all contingencies had been removed," and, in the reply, states that they "dutifully removed all their contractual contingencies," the state court complaint submitted to support their motion states, in paragraph 23: "Plaintiffs have fully performed all conditions, covenants, and promises required by them on their part to be performed in accordance with the terms and conditions of the contract, *except* the final payment for the purchase of the Property." (emphasis added). While Movants appear to have made the initial deposit into escrow, it does not appear that the final purchase price was tendered.

"[A]n 'executory contract' that can be rejected in bankruptcy is a contract on which performance remains due on both sides at the time of the bankruptcy petition." *Matter of Newcomb*, 744 F.2d 621, 624 (8th Cir. 1984); *see also In re Texscan Corp.*, 976 F.2d 1269-1271-72 (9th Cir. 1992). In *Newcomb*, the Court held that when the funds had already been transferred into escrow, there was no executory contract – no material obligations remained on the part of the grantor. *See id.*

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

CONT... AMANDO MORALES and ALICIA MALDONADO

Chapter 7

In the Ninth Circuit, a real estate sales contract remains executory until the full purchase price is deposited into escrow by the purchaser. *See In re Hertz*, 536 B.R. 434, 439-41 (Bankr. C.D. Cal. 2015) (an extended discussion on when a purchase contract loses its executory nature).

Given that the real estate purchase contract may be an executory contract that shortly will be rejected by operation of law under 11 U.S.C. § 365(d)(1), and that Movants are seeking a state court order for specific performance under the contract, granting relief from stay would be improper because the state court proceedings would interfere with the bankruptcy court proceedings. Interference with the administration of the estate is the most important consideration when considering a motion for relief from stay to proceed with state court litigation. *See In re Roger*, 539 B.R. 837, 845 C.D. Cal. 2015) ("According to the court in *Curtis*, the most importance factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate. Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit."). Here, there is a possibility of significant interference with the bankruptcy estate.

Tentative Ruling:

For the foregoing reasons, the Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

AMANDO MORALES

Represented By
William D Gurney

Joint Debtor(s):

ALICIA MALDONADO JIMENEZ

Represented By
William D Gurney

Movant(s):

Eduardo E. Guerrero

Represented By

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Tuesday, May 30, 2017

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10:00 AM

CONT...

AMANDO MORALES and ALICIA MALDONADO

Chapter 7

Christopher J Langley

Trustee(s):

Charles W Daff (TR)

Represented By
Brandon J Iskander
Lynda T Bui

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:17-11752 Christopher Wilkins

Chapter 7

#13.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 6039 Oro Court, Palmdale, CA 93552-4003

MOVANT: SPECIALIZED LOAN SERVICING

EH__

Docket 23

Tentative Ruling:

5/30/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2). GRANT relief pursuant to § 362(d)(4) based on authorized transfers and multiple bankruptcy filings. GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. GRANT request under ¶ 10 but only upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law. DENY alternative request under ¶ 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Christopher Wilkins Pro Se

Movant(s):

Specialized Loan Servicing LLC, as Represented By
Bethany Wojtanowicz

Trustee(s):

Karl T Anderson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:17-12302 Orlando Ismael Alarcon

Chapter 7

#14.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2015 FORD F150, VIN 1FTEW1C82FKE05219

MOVANT: FORD MOTOR CREDIT COMPANY LLC

EH__

Docket 11

Tentative Ruling:

5/30/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2).
GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative
request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or
written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Orlando Ismael Alarcon

Represented By
Freddie V Vega

Movant(s):

Ford Motor Credit Company LLC

Represented By
Sheryl K Ith

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:17-13072 Ricardo Menendez

Chapter 13

#15.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 245 S Iris St., San Bernardino California 92410-2270.

MOVANT: WELLS FARGO BANK

EH__

Docket 18

Tentative Ruling:

5/30/2017

Service is Proper

Opposition: None

While cause arguably exists to lift the stay, Movant to discuss the status of this motion given that Movant withdrew its bad faith objection to confirmation at Debtor's confirmation hearing on May 18, 2017.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ricardo Menendez

Represented By
Sunita N Sood

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Dane W Exnowski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:17-13356 Silvia Alvarez

Chapter 13

#16.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 FORD FUSION, VIN 3FA6P0HD9ER234647 .

MOVANT: FORD MORTOR CREDIT COMPANY LLC

EH__

Docket 12

***** VACATED *** REASON: CASE DISMISSED 5/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Silvia Alvarez

Represented By
Filemon Kevin Samson III

Movant(s):

Ford Motor Credit Company LLC

Represented By
Sheryl K Ith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:17-13882 Rose Marie Rivas

Chapter 7

#17.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: Real Property 203 Lydlwild Dr, #H, San Jacinto, CA 92583

MOVANT: STEVE CAMPINI

EH__

Docket 8

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rose Marie Rivas

Represented By
Christopher J Langley

Movant(s):

Steve Campini

Represented By
William E Windham

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

6:17-14091 Tyra Bagby

Chapter 13

#17.10 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 13242 LAKOTA ST, MORENO VALLEY, CA 92553

MOVANT: STATEWIDE PROPERTY SERVICES, INC. KEN NEWBURY

EH__

Docket 4

Tentative Ruling:

5/30/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 11. GRANT request under ¶ 9 upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law. DENY request under ¶ 7 for lack of cause shown.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Tyra Bagby

Pro Se

Movant(s):

Statewide Property Services, Inc.

Represented By
Barry L O'Connor

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, May 30, 2017

Hearing Room 303

10:00 AM

CONT... Tyra Bagby

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, May 30, 2017

Hearing Room 303

2:00 PM

6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

Adv#: 6:17-01059 ASR Constructors Inc a California Corporation et a v. Gotte Electric, Inc. et

#18.00 Motion for Order Authorizing Deposit of Disputed Funds and Granting Related Interpleader Relief

EH__

Docket 37

***** VACATED *** REASON: CONTINUED TO 6/19/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

Defendant(s):

UNITED STATES OF AMERICA

Represented By
Charles Parker

Western Alliance Bank, an Arizona

Pro Se

Carlin Law Group APC

Pro Se

Bangerter Frazier & Graff PC

Represented By
Daniel P Wilde

Ledcor Construction, Inc., a

Represented By
Daniel P Scholz

Insurance Company Of The West

Represented By
Jennifer Leland
David B Shemano

Gotte Electric, Inc.

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, May 30, 2017

Hearing Room 303

2:00 PM

CONT... ASR Constructors Inc a California Corporation Chapter 11

Employment Development Pro Se

Steven Schonder Pro Se

Angela Denise McKnight Pro Se

Movant(s):

Inland Machinery, Inc. Represented By
James C Bastian Jr

Another Meridian Company, LLC Represented By
James C Bastian Jr

ASR Constructors Inc a California Represented By
James C Bastian Jr

Plaintiff(s):

Inland Machinery, Inc. Represented By
James C Bastian Jr

Another Meridian Company, LLC Represented By
James C Bastian Jr

ASR Constructors Inc a California Represented By
James C Bastian Jr

**United States Bankruptcy Court
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Tuesday, May 30, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01225 Cambridge Medical Funding Group II, LLC v. Allied Injury Management,

#19.00 CONT Status Conference Re: Complaint by Cambridge Medical Funding Group II, LLC against Allied Injury Management, Inc., John C. Larson. 02 - Other e.g. other actions that would have been brought in state court if unrelated to bankruptcy

From: 11/1/16, 12/6/16, 1/31/17, 2/28/17, 3/28/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

John C. Larson

Pro Se

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Plaintiff(s):

Cambridge Medical Funding Group

Represented By
Kenneth Hennesay

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
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2:00 PM

CONT... Allied Injury Management, Inc.

Chapter 11

**United States Bankruptcy Court
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Riverside
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Tuesday, May 30, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#20.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 6/7/16, 8/30/16, 9/14/16, 10/20/16, 10/25/16, 12/6/16, 1/10/17, 2/28/17,
3/28/17

EH__

Docket 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, May 30, 2017

Hearing Room 303

2:00 PM

6:16-19993 B & B Family, Incorporated

Chapter 11

#21.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 12/13/16, 3/7/17

EH__

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

B & B Family, Incorporated

Represented By
Todd L Turoci

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, May 30, 2017

Hearing Room 303

2:00 PM

6:17-11053 Rio Rancho Super Mall LLC

Chapter 11

#22.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 3/28/17

EH__

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, May 31, 2017

Hearing Room 303

11:00 AM

6:11-46989 Resurreccion D Gayle and Lynroy A Gayle

Chapter 7

#1.00 Motion for Reconsideration

EH__

Docket 49

Tentative Ruling:

05/31/2017

BACKGROUND

On December 7, 2011, Resurreccion and Lynroy Gayle (collectively, "Debtors") filed for chapter 7 relief. The Debtors received a discharge and the case was closed on March 22, 2012. On April 8, 2014, the Debtors moved to reopen their case for the purpose of filing motions to avoid liens.

On June 6, 2014, the Debtors moved to avoid the lien of Steven Vanderhei (the "Prior Motion"). The Prior Motion was opposed by Steven Vanderhei ("Vanderhei"). Vanderhei opposed the Prior Motion and a hearing was held on August 20, 2014. At the hearing, the Court determined it appropriate to deny the Prior Motion with prejudice. An order denying the prior motion was entered on August 26, 2014 (the "Vanderhei Order"). The case was closed on January 28, 2015.

On March 30, 2017, the Debtors again moved to reopen the case to seek reconsideration of the Vanderhei Order and substituted new counsel, the Turoci Firm. The Court reopened the case on April 3, 2017. On April 17, 2017, the Debtors moved for reconsideration of the Vanderhei Order ("Motion"). Vanderhei filed Opposition to the Motion on April 28, 2017, and filed a Declaration of Vanderhei on May 1, 2017 ("Opposition"). On May 5, 2017, the Debtors set the matter for hearing and filed their reply on May 23, 2017. Additionally, the Debtors filed objection to the declaration of Vanderhei.

DISCUSSION

FRBP 9024 (incorporating FRCP 60), permits the filing of a motion for reconsideration. However, under FRCP 60(c), a motion for reconsideration filed more

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CONT... **Resurreccion D Gayle and Lynroy A Gayle**

Chapter 7

than one year after the order is entered, such as the Vanderhei Order, may only be made pursuant to 60(b)(6).

Rule 60(b)(6) has been used sparingly as an equitable remedy to prevent manifest injustice. The rule is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment. For example, in *Klapprott v. United States*, 335 U.S. 601, 69 S.Ct. 384, 93 L.Ed. 266 (1949), the Court upheld the use of the rule to set aside a default judgment in a denaturalization proceeding because the petitioner had been ill, incarcerated, and without counsel for the four years following the judgment. *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1050 (9th Cir. 1993) Conversely, in *Ackermann v. United States*, 340 U.S. 193, 71 S.Ct. 209, 95 L.Ed. 207 (1950), the Court held that Rule 60(b)(6) should not be invoked where the petitioner bypassed his right to appeal for tactical reasons. *Id.* The Supreme Court has indicated that Rule 60(b)(6) relief may be had "to accomplish justice," but only under "extraordinary circumstances." *Alpine Land* at 1050.

The Ninth Circuit has indicated that the timeliness of a Rule 60(b)(6) motion "depends on the facts of each case," and relief may not be had where "the party seeking reconsideration has ignored normal legal recourses." *In re Pacific Far East Lines, Inc.*, 889 F.2d 242, 249, 250 (9th Cir.1989) (holding relief appropriate where new legislation undermined the soundness of the judgment). *See also United States v. Holtzman*, 762 F.2d 720 (9th Cir.1985) (five year delay permissible where litigant reasonably interpreted an injunction to authorize litigant's conduct and timely relief was sought upon receipt of notice to the contrary); *Rivera v. Puerto Rico Tel. Co.*, 921 F.2d 393 (1st Cir.1990) (twenty-three day delay permitted because party not properly notified of pending motion); *J.D. Pharmaceutical Distrib., Inc. v. Save-On Drugs & Cosmetics Corp.*, 893 F.2d 1201, 1207 (11th Cir.1990) (relief from judgment granted because party never served with requests for admissions or motion for summary judgment). These cases demonstrate that Rule 60(b)(6) relief normally will not be granted unless the moving party is able to show both injury and that circumstances beyond its control prevented timely action to protect its interests.

Here, the Debtor's sole evidence in support of her 60(b)(6) request is that she relied on her prior counsel to correctly file the motions to avoid lien filed prior to the instant reopening of this case. However, the Debtor's declaration does not demonstrate circumstances beyond her control which prevented timely action to protect her interest. The Debtor has impermissibly delayed in seeking reconsideration. At most, excusable neglect might have been the basis for relief pursuant to Rule 60(b)(1) if the Debtors had sought such relief within a year of the entry of the Vanderhei Order. However, Rule 60(b)(6) is not a substitute for 60(b)(1). *See Alpine Land* at

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1050.

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The Debtor cites to *Cnty. Dental Servs. v. Tani*, 282 F.3d 1164, 1170 (9th Cir. 2002), as amended on denial of reh'g and reh'g en banc (Apr. 24, 2002) in support of her request to have the Vanderhei Order's "with prejudice" provision reconsidered. In *Tani*, the Ninth Circuit held that "gross negligence" of counsel, in contrast to regular or ordinary negligence, could constitute grounds for reconsideration under 60(b)(6). Gross negligence, in turn, is traditionally used to signify a greater, and less excusable, degree of negligence, and typically requires parties alleging gross negligence to establish the existence of a more serious violation of the actor's duty. *Id.* In *Tani*, the record indicated that prior counsel had abandoned representation of the client by failing to comply with court orders requiring him to engage in settlement discussions, failed to file a stipulation permitting the late filing of an answer to a complaint, served the answer two weeks late, then after failing to serve the answer failed to file the answer on the plaintiff, failed to oppose plaintiff's motion to strike the answer, and failed to appear at numerous hearings. The result of the counsel's inaction was the entry of default judgment against his client. The Ninth Circuit found this failure of representation to constitute gross negligence sufficient to warrant reconsideration of the entry of a default judgment. Additionally, the Court's holding was bolstered by the principle that decisions on the merits are favored whenever possible. *Id.*

The Debtor cites to *Cnty. Dental Servs. v. Tani*, 282 F.3d 1164, 1170 (9th Cir. 2002), as amended on denial of reh'g and reh'g en banc (Apr. 24, 2002) in support of her request to have the Vanderhei Order's "with prejudice" provision reconsidered. In *Tani*, the Ninth Circuit held that "gross negligence" of counsel, in contrast to regular or ordinary negligence, could constitute grounds for reconsideration under 60(b)(6). Gross negligence, in turn, is traditionally used to signify a greater, and less excusable, degree of negligence, and typically requires parties alleging gross negligence to establish the existence of a more serious violation of the actor's duty. *Id.* In *Tani*, the record indicated that prior counsel had abandoned representation of the client by failing to comply with court orders requiring him to engage in settlement discussions, failing to sign a stipulation permitting the late filing of an answer to a complaint, filing the answer two weeks late, failing to serve the answer on the plaintiff, failing to oppose plaintiff's motion to strike the answer, and failing to appear at numerous hearings. The result of the counsel's inaction was the entry of default judgment against his client. The Ninth Circuit found this failure of representation to constitute gross negligence sufficient to warrant reconsideration of the entry of a default judgment. Additionally, the Court's holding was bolstered by the principle that decisions on the merits are favored whenever possible. *Id.*

In this case, the Debtor has provided insufficient evidence of gross negligence. In her Reply, the Debtor points to a complaint of misconduct filed by the Debtor on

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CONT... Resurreccion D Gayle and Lynroy A Gayle

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February 24, 2015, against the Debtor's prior counsel (filed as an exhibit to the Opposition). However, there is no indication that a judgment has been entered against the Debtor's prior counsel and no evidence provided in support of the allegations made in the misconduct complaint. Moreover, Vanderhei is correct that the Debtor's misconduct complaint indicates clearly that she believed her prior counsel was negligent in the handling of the bankruptcy cases yet despite that fact she did not seek new counsel to rectify the Vanderhei Order timely. No excuse is provided for the Debtor's delay in seeking reconsideration of the Vanderhei Order in the bankruptcy court. Finally, based on the record of this case, the Debtor's prior counsel filed the Motion (albeit with clear deficiencies) and appeared at the hearing on the motion. The facts of this situation do not resemble the facts of *Tani* where the client was effectively abandoned by her counsel. Instead, the Debtor (without any apparent excuse) continued to rely on counsel that had already demonstrated deficient work product prior to the filing of the second bankruptcy and even after she realized he had made mistakes, waited more than two years to seek reconsideration in this Court.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to DENY the Motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Resurreccion D Gayle

Represented By
Todd L Turoci

Joint Debtor(s):

Lynroy A Gayle

Represented By
Gary S Saunders
Todd L Turoci

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Movant(s):

Resurreccion D Gayle

Represented By
Todd L Turoci

Trustee(s):

John P Pringle (TR)

Pro Se

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Hearing Room 303

11:00 AM

6:13-22710 Jesus M. Tapia

Chapter 7

#2.00 Motion to approve settlement and special counsel fees and costs and authorizing payment to special counsel

EH__

Docket 61

Tentative Ruling:

05/31/2017

BACKGROUND

On July 25, 2013 ("Petition Date"), Jesus Tapia ("Debtor") filed his petition for chapter 7 relief. Robert Whitmore is the duly appointed chapter 7 trustee ("Trustee").

The Debtor received his discharge and his case was closed on November 5, 2013. The case was reopened on April 27, 2016, for the Debtor to amend his schedules to disclose the existence of prepetition litigation. The lawsuit involved an abdominal wall mesh infection and abscess in the Debtor which the Debtor alleges were caused by the implantation of a Kugel Patch manufactured by the defendants (the "Lawsuit"). The UST subsequently moved for reappointment of the Trustee to investigate the potential that any settlement might be property of the estate.

On April 17, 2017, the Trustee filed his Motion to Approve Compromise under Rule 9019 (the "Motion"). No opposition was filed to the Motion. On May 3, 2017, having determined that the Motion contained insufficient evidence of the value of the claim underlying the proposed settlement, the Court set the matter for hearing to provide the Trustee an opportunity to provide supplemental evidence.

The Trustee provided supplemental evidence on May 17, 2017.

DISCUSSION

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CONT... Jesus M. Tapia

Chapter 7

APPROVAL OF COMPROMISE PURSUANT TO RULE 9019

Rule 9019(a) authorizes the bankruptcy court to approve a compromise or settlement on the trustee's motion and after notice and a hearing. The bankruptcy court must consider all "factors relevant to a full and fair assessment of the wisdom of the proposed compromise." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424, 88 S. Ct. 1157, 20 L. Ed. 2d 1 (1968). In other words, the bankruptcy court must find that the settlement is "fair and equitable" in order to approve it. *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986).

In conducting this inquiry, the bankruptcy court must consider the following factors:

(a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id.

The bankruptcy court enjoys broad discretion in approving a compromise because it "is uniquely situated to consider the equities and reasonableness [of it]" *United States v. Alaska Nat'l Bank (In re Walsh Construction, Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). As stated in *A & C Props.*:

The purpose of a compromise agreement is to allow the trustee and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims. The law favors compromise and not litigation for its own sake, and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision must be affirmed.

Id. (citations omitted).

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On the other hand, even though the bankruptcy court has wide latitude in approving compromises, its discretion is not completely unfettered. *See Woodson v. Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). The trustee bears the burden of proving to the bankruptcy court that the settlement is fair and equitable and should be approved. *In re A&C Props.*, 784 F.2d at 1382.

a. Sufficiency of Evidence

The Court shall address the evidence in support of each of the *A & C Props.* factors.

1. The Probability of Success in the Underlying Litigation

In the supplement to the Motion, the Trustee provided the analysis of Troy Brenes in which he evaluated the specific difficulties involved in the Debtor's litigation and the benefits of settlement. (Brenes Decl. ¶4). This factor weighs in favor of the settlement.

2. Difficulty of Collection

The Motion did not present any definitive challenges to collection. As such, this factor is neutral.

3. Complexity, Cost, Inconvenience and Delay of Litigation

The supplement to the Motion underscores the complexity of the litigation involved, in particular the Court notes that significant expert testimony and substantial litigation appears likely to be required in order for the Trustee to prevail on the Debtor's claim and recover for the benefit of creditors. (Brenes Decl. ¶4). This factor weighs in favor of the settlement.

4. Interest of Creditors

The complexity of the pending litigation and the difficulties outlined by the Trustee in the Motion and supplement underscore that approval of the settlement rather than causing the Trustee to incur attorney fees in continued litigation outside of

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the bankruptcy court is in the best interest of creditors. Additionally, the Trustee has demonstrated that he has evaluated sufficient evidence of comparable jury verdicts in order to determine that the settlement figure of \$400,000 being proposed is reasonable. (Trustee Supp. Decl. ¶3). Finally, the Trustee has indicated that based on claims filed in the bankruptcy case, after payment of attorney fees and costs, administrative costs, and payments to unsecured creditors, that the settlement award is sufficient to result in a surplus estate which will pay out funds to the Debtor. (Trustee Decl. ¶8).

TENTATIVE RULING

Based on the foregoing, the Trustee has demonstrated that the settlement is fair and equitable and the Motion is GRANTED and the settlement is APPROVED as follows:

- (1) approving settlement related to the matter entitled *Jesus Tapia v. Davol Inc. et al*, case no. 6:16-ap-01265-MH, pursuant to Federal Rule of Bankruptcy Procedure 9019;
- (2) approving and authorizing payment to Trustee's special counsel for its costs; and
- (3) approving special counsel fees to be held in trust by Trustee's bankruptcy counsel, Reid & Hellyer, pending the resolution of a fee dispute.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Jesus M. Tapia

Represented By
Michael Smith

Movant(s):

Robert Whitmore (TR)

Represented By
Douglas A Plazak
Troy A Brenes

Trustee(s):

Robert Whitmore (TR)

Represented By
Douglas A Plazak

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Jesus M. Tapia

Troy A Brenes

Chapter 7

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Hearing Room 303

11:00 AM

6:13-26277 Charles Frederick Biehl

Chapter 7

#3.00 Motion RE: Objection to Claim Number 7 by Claimant Lawrence M. Shanahan

EH__

Docket 185

***** VACATED *** REASON: ORDER ENTERED ON 5/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Frederick Biehl

Represented By

Daryl L Binkley - INACTIVE -
Steven L Bryson

Movant(s):

Steven L. Bryson

Represented By

Steven L Bryson

Trustee(s):

John P Pringle (TR)

Represented By

James C Bastian Jr
Elyza P Eshaghi
Brandon J Iskander

**United States Bankruptcy Court
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11:00 AM

6:13-27863 Ronald Leroy Stearns and Alicia Gay Stearns

Chapter 7

#4.00 CONT Motion to Avoid Lien with Merchants Financial Gaurdian

From: 5/17/17

Also #5

EH _____

Docket 30

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald Leroy Stearns

Represented By
John F Mansour

Joint Debtor(s):

Alicia Gay Stearns

Represented By
John F Mansour

Movant(s):

Alicia Gay Stearns

Represented By
John F Mansour
John F Mansour

Ronald Leroy Stearns

Represented By
John F Mansour

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

6:13-27863 Ronald Leroy Stearns and Alicia Gay Stearns

Chapter 7

#5.00 CONT Motion to Avoid Lien with Capitol One Bank USA NA

From: 5/17/17

Also #4

EH ____

Docket 29

Tentative Ruling:

05/31/2017

BACKGROUND

On October 30, 2013 ("Petition Date"), Ronald and Alicia Stearns (collectively, "Debtors") filed their petition for chapter 7 relief. Among the assets of the estate is real property located at 7573 Honeysuckle Street in Fontana, CA 92336 (the "Property"). The Debtors received a discharge and the case was closed on February 11, 2014.

On January 10, 2017, the Court granted the Debtors' request to reopen the case for the purpose of avoiding judgment liens recorded against the Property. On February 2, 2017, the Debtor filed motions to avoid the liens of Capital One Bank ("Capital One") and Merchants Financial Guardian ("Merchants") pursuant to 11 U.S.C. § 522 (f). At the hearing on the Debtors initial motions, the Court denied both motions due to various technical issues with the motions. The tentative ruling indicated as follows:

The Court is inclined to DENY the motion without prejudice for a variety of technical reasons. Primarily, the filing that is actually set for hearing is Docket No. 17, which is simply a "notice" that does not attach, contain, incorporate, or reference a motion. Second, the earlier motion filed by Debtors, Docket No. 16, contains no admissible evidence regarding the value of the first lien as of the petition date. Third, the Court notes that Local Rule 4003-(2)(b)(1) prevents Debtors from bringing one motion to avoid two lines under 11 U.S.C. § 522(f).

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Ronald Leroy Stearns and Alicia Gay Stearns

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Fourth, the earlier motion contains multiple, material factual inconsistencies, including the amount of the claimed exemption and the fair market value of the property.

Tentative Ruling on Motion to Avoid Liens, March 29, 2017.

On April 21, 2017, the Debtors refiled their motions to avoid the liens of Capital One Bank and Merchants. On May 18, 2017, the Debtors withdrew their motion to avoid the lien of Merchants. The only motion currently pending is the motion to avoid the lien of Capital One Bank (the "Motion").

DISCUSSION

As a threshold matter, the Motion was not properly served on Capital One via FRBP 7004(h) which requires service on a FDIC insured entity via certified mail and to the attention of an officer at the address indicated for the institution on the FDIC website. The Debtors did not comply with any of these requirements for service.

Section 522(f)(1)(A) provides in relevant part: "the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled ... if such lien is (A) a judicial lien." 11 U.S.C. § 522(f)(1)(A) (emphasis supplied).

Section 522(f)(2) prescribes a formula for calculating whether an exemption is impaired:

- (2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—
 - (i) the lien;
 - (ii) all other liens on the property; and
 - (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens.
- (B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.
- (C) This paragraph shall not apply with respect to a judgment arising out of a

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mortgage foreclosure.

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11 U.S.C. § 522(f)(2) (emphasis supplied). That is, an exemption is impaired if the sum of all of liens and the exemption yields a total that is greater than the fair market value of the property. *See In re Meyer*, 373 B.R. 84, 89 (9th Cir. BAP 2007).

Here, the Debtors assert that the first lien on the Property is \$173,433.90, that the Property is next encumbered by the lien of Merchants in the amount of \$48,351.02, and by the lien of Capital One in the amount of \$3,928.15. The Debtors have asserted an exemption in the Property of \$100,000. However, the Debtors Schedule C indicates that they have exempted \$76,566.10 in the Property and have not sought to amend their schedules. Nevertheless, assuming the values are correct, the total of the liens and exemption is \$302,279.17 which is greater than the fair market value of the Property of \$270,000 as asserted by the appraisal obtained by the Debtors. These figures would indicate that the lien of Capital One impairs the exemption of the Debtors.

TENTATIVE RULING

Based on the foregoing, the Court is inclined CONTINUE the hearing on the Motion to June 28, 2017, at 11:00 a.m., for the Debtor to properly serve Capital One per FRBP 7004(h) with an amended Notice of Motion and Motion as indicated above.

APPEARANCES WAIVED. Movant to file and serve the amended notice of motion and motion.

Party Information

Debtor(s):

Ronald Leroy Stearns

Represented By
John F Mansour

Joint Debtor(s):

Alicia Gay Stearns

Represented By
John F Mansour

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CONT... Ronald Leroy Stearns and Alicia Gay Stearns

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Movant(s):

Ronald Leroy Stearns

Represented By
John F Mansour

Trustee(s):

Lynda T. Bui (TR)

Pro Se

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11:00 AM

6:15-21418 James Lloyd Walker

Chapter 7

#6.00 CONT Motion RE: Objection to Claim Number 1 by Claimant Real Time Resolutions, Inc

From: 5/17/17

Also #7

EH__

Docket 70

Tentative Ruling:

05/31/2017

Background:

On November 23, 2015 ("Petition Date"), James Lloyd Walker (the "Debtor") filed his petition for chapter 7 relief. Robert Whitmore is the duly appointed chapter 7 trustee ("Trustee")

On April 12, 2017, the Trustee filed an Objection to Claim No. 1 (the "Objection") of Real Time Solutions ("Claimant"). Service was proper and no opposition has been filed.

Claim #: 1

Amount: \$188,580.44

Objection:

The Trustee objects to the claim on the basis that the HELOC originally secured by the Debtor's real property is no longer secured following the foreclosure of the Property and is otherwise barred by the applicable statute of limitations.

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Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *United States v. Offord Fin., Inc., (In re Medina)*, 205 B.R. 216,222 (9th Cir. BAP 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *Ashford v. Consol. Pioneer Mort. (In re Consol. Pioneer Mort.)*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *Lundell*, 223 F.3d at 1039; *Holm*, 931 F.2d at 623.

Analysis:

Rebuttal of the Prima Facie Proof of Claim

In this case, the Trustee asserts that the Claim should be disallowed as time barred. Section 502(b)(1) provides that a claim is deemed allowed, unless such claim is

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CONT... James Lloyd Walker

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unenforceable against the debtor and property of the debtor under applicable law. The statute of limitations applicable to common counts is four years if the action is founded upon a contract or other writing (e.g., "book account" (§ 3:398), "account stated" (§ 3:400), or money lent on a note), and the statute of limitations is generally four years from the date of the last item in the account. CCP § 337(1),(2); Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co., 116 CA 4th 1375, 1396, FN. 9 (Cal. App. 2004).

Here, the Trustee has provided evidence that the Property was sold at foreclosure extinguishing the secured claim of the Claimant. The documentation further indicates that the foreclosure occurred on April 25, 2011. Thus, assuming as does the Trustee, that the Claimant did not receive any payments following the foreclosure sale, the Trustee is correct that the statute of limitations under state law has lapsed. Moreover, Claimant, though properly served, has failed to respond, which may be deemed as consent to the relief requested under LBR 9013-1(h). Thus, as the ultimate burden of persuasion remains on the Claimant, the Objection must be sustained.

Tentative Ruling

The Objection is SUSTAINED. Claim #1 is disallowed in its entirety.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

James Lloyd Walker

Pro Se

Movant(s):

Robert Whitmore (TR)

Represented By
Franklin C Adams

Trustee(s):

Robert Whitmore (TR)

Represented By
Franklin C Adams

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Courtroom 303 Calendar**

Wednesday, May 31, 2017

Hearing Room 303

11:00 AM

6:15-21418 James Lloyd Walker

Chapter 7

#7.00 CONT Motion RE: Objection to Claim Number 2 by Claimant Real Time Resolutions

From: 5/17/17

Also #6

EH__

Docket 72

Tentative Ruling:

05/31/2017

Background:

On November 23, 2015 ("Petition Date"), James Lloyd Walker (the "Debtor") filed his petition for chapter 7 relief. Robert Whitmore is the duly appointed chapter 7 trustee ("Trustee")

On April 12, 2017, the Trustee filed an Objection to Claim No. 2 (the "Objection") of Real Time Resolutions, Inc. ("Claimant"). Service was proper and no opposition has been filed.

Claim #: 2

Amount: \$82,256.37

Objection:

The Trustee objects to the claim on the basis that as a claim that is fully secured, the Claimant should not be permitted to participate in any distribution as an unsecured creditor.

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CONT... James Lloyd Walker

Chapter 7

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *United States v. Offord Fin., Inc., (In re Medina)*, 205 B.R. 216,222 (9th Cir. BAP 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *Ashford v. Consol. Pioneer Mort. (In re Consol. Pioneer Mort.)*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *Lundell*, 223 F.3d at 1039; *Holm*, 931 F.2d at 623.

Analysis:

Here, the Claim as filed confirms that it is for a secured lien on the Debtor's Property. Based on the Trustee's showing, and given the nonopposition to the Objection by the Claimant, the Court is inclined to grant the Trustee's request.

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CONT... James Lloyd Walker

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Tentative Ruling

The Objection is SUSTAINED. Claim #2 is allowed as a secured claim only which shall not receive a distribution from the estate as an unsecured creditor.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

James Lloyd Walker

Pro Se

Movant(s):

Robert Whitmore (TR)

Represented By
Franklin C Adams

Trustee(s):

Robert Whitmore (TR)

Represented By
Franklin C Adams

**United States Bankruptcy Court
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11:00 AM

6:17-10720 Hiep Huu Phan

Chapter 7

#8.00 Motion for Order Extending Deadline for the Trustee and/or the United States Trustee to file a Motion to Dismiss the Debtor's case Pursuant to 11 U.S.C. § 707(b) and/or an Adversary Complaint Pursuant to 11 U.S.C. § 727 and FRBP 4004(b)(2)

EH__

Docket 19

Tentative Ruling:

05/31/2017

BACKGROUND

On January 30, 2017 ("Petition Date"), Hiep Huu Phan ("Debtor") filed his petition for chapter 7 relief. Karl Anderson is the duly appointed chapter 7 trustee ("Trustee").

On April 27, 2017, the Debtor filed a Motion for an order extending the deadline for the Trustee and/or the United States Trustee to file a motion to dismiss the Debtor's case and/or an adversary complaint pursuant to 11 U.S.C. § 727 (the "Motion").

DISCUSSION

Under FRBP 4004(a) and 1017(e), on a motion of any party in interest, the court may for cause extend the time to object to discharge or to seek dismissal. Fed. R. Bankr. P. 4004, 1017.

As a matter of practice what constitutes "cause" rests within the discretion of the bankruptcy court. *See In re James*, 187 B.R. 395, 397 (Bankr. N.D. Ga. 1995). Also, Courts are generally unified in the view that the term "for cause" should receive a liberal construction. *Id.* Notwithstanding that fact, however, a creditor must exhibit some minimum degree of due diligence prior to seeking such an extension, and the

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CONT... **Hiep Huu Phan**

Chapter 7

Court should not allow the motion to serve as license for a baseless "fishing expedition." *Id*; See also *In re Leary*, 185 B.R. 405, 406 (Bankr. D. Mass. 1995). To establish cause movant must (1) show that he had, with reasonable diligence, attempted to investigate the facts and circumstances, and (2) offer a reasonable explanation of why that investigation could not be completed within the allotted time. See *In re Bomarito*, 448 B.R. 242, 251 (Bankr. E.D. Cal. 2011).

The Trustee provided evidence that he has been seeking documents from the Debtor related to the operation of a business. (Isaacson Decl. ¶4). The Trustee's counsel has determined that although the Debtor indicated that he earned no income from operation of a business in calendar years 2015 and 2016, the Debtor's tax returns demonstrate that the Debtor earned wages in both years and also earned wages which of no less than \$14,003 that were not disclosed in his Statement of Financial Affairs (SOFA). (*Id.* at ¶6). The Trustee and UST would like to examine the Debtor regarding the inaccuracies at the continued 341(a) meeting of creditors.

In addition to the Trustee's showing of "cause", the Court notes that the Debtor, though properly served, has failed to file any opposition which the Court deems as consent to the granting of the Motion pursuant to LBR 9013-1(h).

TENTATIVE RULING

Based on the foregoing, the Court will GRANT the relief requested and provide the Trustee and UST extensions of 60 days for the filing of a complaint under § 727 and/or for a motion to dismiss.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Hiep Huu Phan

Represented By
Toby T Tran

Movant(s):

Karl T Anderson (TR)

Represented By
Misty A Perry Isaacson

Trustee(s):

Karl T Anderson (TR)

Represented By
Misty A Perry Isaacson

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CONT... Hiep Huu Phan

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11:00 AM

6:16-17768 Dispatch Transportation LLC

Chapter 7

#9.00 CONT Motion for 2004 Examination -- Motion of USA Waste of California, Inc. for an Order Authorizing the Examination of Craig Johnson and the Issuance of Subpoenas Duces Tecum to Commodity Trucking Acquisition, LLC and Craig Johnson Pursuant to Fed.R. Bankr.P. 2004

FROM: 5/3/17, 5/17/17

EH__

Docket 46

***** VACATED *** REASON: CONTINUED TO 6/28/17 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dispatch Transportation LLC

Represented By
Leonard M Shulman
Elyza P Eshaghi

Movant(s):

USA Waste of California, Inc.

Represented By
Paul J Laurin

Trustee(s):

Charles W Daff (TR)

Represented By
Toan B Chung

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11:00 AM

6:16-17769 Efred Diaz Estrada

Chapter 7

#10.00 CONT Motion to Vacate Discharge to enable Conversion of Case to Chapter 13

From: 5/17/17

Also #11

EH__

Docket 39

***** VACATED *** REASON: CONTINUED TO 6/7/17 AT 11:00**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Efred Diaz Estrada

Represented By
W. Derek May

Movant(s):

Efred Diaz Estrada

Represented By
W. Derek May
W. Derek May
W. Derek May

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Brianna L Frazier
Rika Kido
Ryan D ODea

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11:00 AM

6:16-17769 Efren Diaz Estrada

Chapter 7

#11.00 CONT Motion to Convert Case From Chapter 7 to 13

From: 4/5/17, 5/17/17

Also #10

EH__

Docket 33

*** VACATED *** REASON: CONTINUED TO 6/7/17 AT 11:00 AM

Tentative Ruling:

04/05/17

BACKGROUND

On August 30, 2016 ("Petition Date"), Efren Estrada ("Debtor"), filed his petition for chapter 7 relief. Charles Daff is the duly appointed chapter 7 trustee ("Trustee"). On December 12, 2016, the Debtor received a chapter 7 discharge.

On March 14, 2017 (or approximately 7 months after the Petition Date and post-discharge), the Debtors filed their motion for conversion of their case to a case under chapter 13 ("Motion"). On March 22, 2017, the Trustee filed opposition to the Debtors' Motion ("Opposition"). On March 29, 2017, the Debtors filed their reply ("Reply").

DISCUSSION

The Trustee argues that the Debtor's Motion should be denied because it has been filed in bad faith and because the Debtor's chapter 7 discharge precludes conversion pursuant to this Court's holding in *In re Santos*, 561 B.R. 825, 829 (C.D. Cal. 2017).

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CONT... Efren Diaz Estrada

Chapter 7

In response, the Debtor asserts that he will propose a chapter 13 plan that would pay the creditors whose debts have presumably already been discharged in this case. The only basis advanced by the Debtor to support his contention that a Debtor can propose to pay already discharged debts in a post-discharge converted chapter 13 case is that a different Judge in the Central District permitted such conversion in another case known to Counsel for the Debtor. The Debtor, however, has not indicated the legal basis for this other court's ruling and such ruling would not be binding on this Court. Separately, the Court notes that although not expressly discussed in the Memorandum Decision on *Santos*, the Debtors in that case had also proposed to pay creditors whose debts had already been discharged at 100% through a confirmed chapter 13 plan. However, the bare promise that such a plan will be proposed where the Debtor's chapter 7 debts have already been discharged has no binding effect.

Having failed to distinguish *Santos*, the Court declines to reach the issues raised by the Trustee regarding alleged bad faith of the Debtor in failing to properly identify the nature of his interest in the Property.

TENTATIVE RULING

Based on the foregoing, and following the *Santos* holding, the Court finds that "cause" exists to deny the Debtor's request for conversion because the Debtor has received the benefits of a chapter 7 discharge and now seeks to avoid the concomitant burden of allowing the Trustee to administer the Debtor's assets for the benefit of creditors.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Efren Diaz Estrada

Represented By
W. Derek May

Movant(s):

Efren Diaz Estrada

Represented By
W. Derek May

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CONT... Efren Diaz Estrada

Chapter 7

W. Derek May

W. Derek May

Trustee(s):

Charles W Daff (TR)

Represented By

Lynda T Bui

Brianna L Frazier

Rika Kido

Ryan D ODea

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Wednesday, May 31, 2017

Hearing Room 303

11:00 AM

6:16-21078 ALPINE INDUSTRIES, LLC

Chapter 7

#12.00 CONT Motion to Dismiss Chapter 7 Case

From: 4/26/17

EH__

Docket 17

Tentative Ruling:

04/26/2017

BACKGROUND

On December 20, 2016, Alpine Industries LLC ("Debtor") filed a petition for chapter 7 relief. Robert Whitmore is the duly appointed chapter 7 trustee ("Trustee"). The bankruptcy petition is supported by an electronic filing declaration signed by the Debtor's prior counsel, Laleh Ensafi ("Ensafi") and also purportedly by the Debtor's principal, Michael Kiralla ("Kiralla"). (Docket No. 2).

On March 22, 2017, the Debtor filed a substitution, terminating the representation of Ensafi. On March 28, 2017, the Debtor filed a Motion to Dismiss its chapter 7 case ("Motion"). The Motion appears to have been properly served on the Trustee and all creditors. No opposition has been filed.

The Motion asserts as its primary basis for dismissal that (1) Kiralla was not fully informed of how the bankruptcy would affect the Debtor by Ensafi and (2) that the signature used to file the bankruptcy petition was not Kiralla's.

The electronic filing declaration certifies the accuracy of documents being filed by an attorney and certified an authorized signatory's permission to have the document filed by an attorney. Here, the allegations that form the basis for the dismissal can only be controverted by Ensafi. Notwithstanding, the Motion was not served on Ensafi.

Based on the foregoing the Court will CONTINUE the hearing to May 31, 2017, at 11:00 a.m. for service on Ensafi.

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CONT... ALPINE INDUSTRIES, LLC

Chapter 7

APPEARANCES WAIVED. Movant to file/serve the Motion on Ensafi, and to file/serve notice of the continuance on all parties.

Party Information

Debtor(s):

ALPINE INDUSTRIES, LLC

Represented By
Michael E Clark

Movant(s):

ALPINE INDUSTRIES, LLC

Represented By
Michael E Clark

Trustee(s):

Robert Whitmore (TR)

Pro Se

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11:00 AM

6:16-19150 Charles David Arthur and Claire Bigornia Blanza Arthur Chapter 7

#13.00 CONT Chapter 7 Trustee's Motion for Order: (1) Authorizing the Short Sale of Real Property of the Estate Free and Clear of Liens Pursuant to Bankruptcy Code §§ 363(b) and (f); (2) Approving Payment of Real Estate Commission; & (3) Granting Related Relief

From: 5/17/17

EH__

Docket 39

Tentative Ruling:

05/31/2017

BACKGROUND

On October 16, 2016 ("Petition Date"), Charles David Arthur and Claire Blanza Arthur (collectively, "Debtors") filed their petition for chapter 7 relief. Charles Daff is the duly appointed chapter 7 trustee ("Trustee"). Among the assets of the Debtors' bankruptcy estate ("Estate") is real property located at 35965 Carlton Road in Wildomar, CA (the "Property").

On April 25, 2017, the Trustee filed a Motion seeking (1) authority for a short sale of the Estate's right, title, and interest in the Property free and clear of the interests; (2) approving payment of broker commission; and (3) granting related relief ("Motion").

No opposition has been filed.

DISCUSSION

I. Sale of Estate Property Pursuant to Section 363(b)

The trustee, after notice and a hearing, may sell property of the estate. 11

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U.S.C. § 363(b)(1); *see also Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). The sale must be in the best interests of the estate and the price must be fair and reasonable. *In re Canyon Partnership*, 55 B.R. 520 (Bankr. S.D. Cal. 1985); *see also In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991)(sale must have fair/reasonable price, accurate/reasonable notice to creditors and sale made in good faith). The trustee must articulate some "business justification" for selling estate property out of the "ordinary course of business" before the court may approve the transaction. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Ernst Home Ctr., Inc.*, 209 B.R. 974, 979 (Bankr. W.D. Wash. 1997). Objections to sale that are based on inadequacy of price are often resolved the court ordering an auction, which may occur in open court. *Simantrob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 287 (9th Cir. BAP 2005) *citing* Fed. R. Bankr. P. 6004(f).¹

Here, the Trustee asserts that the short sale will result in the estate being paid a fee of approximately \$21,750. The declarations of Karina Jimenez and Anthony Silva (the "Buyers") indicate that the estate will be paid a fee of \$21,750, in addition to the purchase price of \$350,000. However, the Motion is not clear as to what underlies the "fee" being paid. Instead, it appears that the "fee" is actually a part of the purchase price. The framework proposed by the Trustee appears to indicate bad faith because he provides no basis rooted in bankruptcy for the Estate to charge a fee in exchange for the sale of an asset of the Estate.

a) Sale Free and Clear of non-Debtor Interests

A trustee may sell estate property "free and clear" of third party interests in the property, such as co-ownership interest, liens, claims and encumbrances. *See* 11 U.S.C. § 363(f). A sale free and clear of third party interests pursuant to section 363 is authorized only if one of the following conditions is met: (1) sale authorized by applicable nonbankruptcy law; (2) third party whose interest will be affected consents; (3) the affected interest is a lien and the sale price is greater than total value of all liens on the property; (4) the affected interest is a bona fide dispute; or (5) the third party whose interest will be affected could be compelled to accept a money satisfaction of the interest. 11 U.S.C. § 363(f)(1)-(5).

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CONT... Charles David Arthur and Claire Bigornia Blanza Arthur

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The Trustee has not obtained consent from the first priority secured lender. Without such consent, the Court cannot grant the Motion free and clear of this lien. As to the remaining junior liens, the Trustee proposes that a hypothetical foreclosure sale situation satisfies Section 363(f)(5). However, the Court believes that the analysis provided in *Dishi & Sons v. Bay Condos LLC*, 510 B.R. 696, 711 (S.D.N.Y. 2014) provides the better view of whether a hypothetical foreclosure sale can be a basis for granting free and clear under 363(f)(5).

[A] narrow interpretation [of 363(f)(5)] provides a limited role for paragraph (5), but avoids rendering the remaining paragraphs mere surplusage. See *In re PW*, 391 B.R. 25, 44 (9th Cir. BAP 2008) ("[A]ny interpretation of paragraph (5) must satisfy the requirement that the various paragraphs of subsection (f) work harmoniously and with little overlap."). Other courts have therefore limited the scope of paragraph (5) to those scenarios where the trustee or debtor, not any third party, is the actor. See, e.g., *In re Ricco, Inc.*, 2014 WL 1329292, *3 (Bankr.N.D.W.Va. Apr. 1, 2014) ("[T]he only logical interpretation of ... § 363(f)(5) is that the statute requires that the trustee or debtor be the party able to compel monetary satisfaction for the interest which is the subject of the sale.") (quoting *In re Haskell*, 321 B.R. at 9); *In re Scott*, 2013 WL 4498987, *2–3 (Bankr.E.D.Ky. Aug. 21, 2013) (paragraph (5) does not refer to foreclosure proceedings because they are initiated by creditors, not the debtor); *In re Haskell*, 321 B.R. at 9 (paragraph (5) does not encompass eminent domain proceedings because the trustee must be the party capable of compelling the interest holder to accept a money satisfaction). **This Court agrees that paragraph (5) should be read to reach only those legal or equitable proceedings that could be brought by the trustee as owner of the property. A foreclosure by a third-party mortgagee is not such a proceeding.** And as Dishi has not suggested any other hypothetical proceedings by which the trustee could compel TGM to accept a money satisfaction in exchange for extinguishment of its interest, the Court holds that paragraph (5) does not authorize a sale free and clear of TGM's rights. *In re Daufuskie Island Props., LLC*, 431 B.R. 626, 637 (Bankr.D.S.C.2010)

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(noting that the burden is on the proponent of the sale to identify the basis for the sale).

Dishi & Sons at 711 (S.D.N.Y. 2014)(emphasis added).

Here, the Court is inclined to agree with the rationale of *Dishi & Sons* that 363 (f)(5) should be read narrowly to encompass only legal or equitable proceedings that could be brought by the trustee as the owner of the property. For this reason, the Court is inclined to deny the Trustee's request to permit a sale free and clear of the junior liens against the Property.

TENTATIVE RULING

Based on the foregoing analysis, the Court is inclined to DENY the Motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Charles David Arthur	Represented By Anerio V Altman
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Joint Debtor(s):

Claire Bigornia Blanza Arthur	Represented By Anerio V Altman
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Movant(s):

Charles W Daff (TR)	Represented By Lynda T Bui Rika Kido
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Trustee(s):

Charles W Daff (TR)	Represented By
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CONT...

Charles David Arthur and Claire Bigornia Blanza Arthur

Lynda T Bui

Rika Kido

Chapter 7

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11:00 AM

6:16-11086 Bernard Joseph O'Kelly

Chapter 7

#14.00 Motion For Sale of Property of the Estate under Section 363(b) - No Fee Chapter 7 Trustee's Motion for Order: (1) Approving the Sale of Real Property of the Estate Pursuant to Bankruptcy Code § 363(b)(1) and Subject to Overbids, Combined With Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; (2) Approving Payment of Real Estate Commission and Other Costs; and (3) Granting Related Relief

EH__

Docket 49

Tentative Ruling:

05/31/2017

BACKGROUND

On February 9, 2016 ("Petition Date"), Bernard Joseph O'Kelly ("Debtor") filed his petition for chapter 7 relief. Charles Daff is the duly appointed chapter 7 trustee ("Trustee"). Among the assets of the Debtor's bankruptcy estate ("Estate") is vacant land located at 0 State Line in Big Bear City, California APN: 0315-097-17 (the "Property").

On May 10, 2017, the Trustee filed a Motion for Order: (1) Approving the Sale of Real Property of the Estate Pursuant to Bankruptcy Code § 363(b)(1) and Subject to Overbids, Combined With Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; (2) Approving Payment of Real Estate Commission and Other Costs; and (3) Granting Related Relief ("Motion").

No opposition has been filed.

DISCUSSION

I. Sale of Estate Property Pursuant to Section 363(b)

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The trustee, after notice and a hearing, may sell property of the estate. 11 U.S.C. § 363(b)(1); *see also Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). The sale must be in the best interests of the estate and the price must be fair and reasonable. *In re Canyon Partnership*, 55 B.R. 520 (Bankr. S.D. Cal. 1985); *see also In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991)(sale must have fair/reasonable price, accurate/reasonable notice to creditors and sale made in good faith). The trustee must articulate some "business justification" for selling estate property out of the "ordinary course of business" before the court may approve the transaction. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Ernst Home Ctr., Inc.*, 209 B.R. 974, 979 (Bankr. W.D. Wash. 1997). Objections to sale that are based on inadequacy of price are often resolved the court ordering an auction, which may occur in open court. *Simantrob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 287 (9th Cir. BAP 2005) *citing* Fed. R. Bankr. P. 6004(f).¹

Here, the Trustee asserts that the proposed sale of \$15,000, subject to overbids, constitutes a sale of the property at fair market value which will provide the best and highest value for the benefit of the Estate. (Trustee Decl. ¶8). The Trustee's calculation of proceeds is the following:

Sale Price ...	\$15,000
Broker's Commission/costs of sale ...	\$1,800
<u>Property Taxes (estimated) ...</u>	<u>\$430</u>
Net Equity for the Estate:	\$12,770

a) **Sale Made in Good Faith**

The proposed sale has been brought in good faith and has been negotiated on an "arms- length" basis. The court, in Wilde Horse Enterprises, set forth the factors in considering whether a transaction is in good faith. The court stated:

‘Good faith’ encompasses fair value, and further speaks to the integrity of the

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transaction. Typical 'bad faith' or misconduct, would include collusion between the seller and buyer, or any attempt to take unfair advantage of other potential purchasers. . . . And, with respect to making such determinations, the court and creditors must be provided with sufficient information to allow them to take a position on the proposed sale.

Id. at 842 (citations omitted).

Here, the Trustee has arranged for sale of the Property with overbidding at the hearing. Trustee employed a broker, Becki Wheeler of Re/Max Big Bear ("Broker"), to market and sell the Property. The Broker, in turn, marketed the Property and received one offer. The marketing of the Property coupled with the overbidding support a finding that the sale is untainted by self-dealing (i.e. sale proposed in good faith and at arm's length).

b) Sale Free and Clear of non-Debtor Interests

A trustee may sell estate property "free and clear" of third party interests in the property, such as co-ownership interest, liens, claims and encumbrances. *See* 11 U.S.C. § 363(f). A sale free and clear of third party interests pursuant to section 363 is authorized only if one of the following conditions is met: (1) sale authorized by applicable nonbankruptcy law; (2) third party whose interest will be affected consents; (3) the affected interest is a lien and the sale price is greater than total value of all liens on the property; (4) the affected interest is a bona fide dispute; or (5) the third party whose interest will be affected could be compelled to accept a money satisfaction of the interest. 11 U.S.C. § 363(f)(1)-(5).

Here, the only lien shown on the Title Report appears to be in favor of the San Bernardino County Tax Collector (the "County") for current and defaulted taxes in the amount of approximately \$429.57. The Trustee proposes that this amount be paid through escrow with proceeds from the sale. Given that the County will receive full satisfaction of its claim, the Property may be sold free and clear of its interest.

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CONT... Bernard Joseph O'Kelly

Chapter 7

c) Bidding Procedures

Generally, bidding procedures must be untainted by self-dealing, encourage bidding and be fair/reasonable/serve the best interests of the estate. *See In re Crown Corp.*, 679 F.2d 774 (9th Cir. 1982).

The Court has reviewed the Trustee's overbid procedures and finds that they adequately provide for an orderly sale untainted by self-dealing. (Mot. at 5:1-28, 6:1-3). The Court finds the procedures to be fair and reasonable, and in the best interests of the estate.

d) Purchaser in "Good Faith" Pursuant to Section 363(m)

Section 363(m) provides that "[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith...." 11 U.S.C. § 363(m).

The Trustee has attached the declaration of the Paul Stephens, establishing that the proposed sale is an arms-length transaction. On this basis, the Court is inclined to find that Paul Stephens is a good faith purchaser under § 363(m).

e) Compensation of Real Estate Broker

Here, the Trustee seeks authorization to pay from escrow, the following broker commissions, which together constitute 10% of the gross sale price or a total of approximately \$1,500. The Court finds that the amounts requested are reasonable and are approved.

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Wednesday, May 31, 2017

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11:00 AM

CONT... Bernard Joseph O'Kelly

Chapter 7

TENTATIVE RULING

For the foregoing reasons, the Court is inclined to GRANT the Motion as follows:

1. Authorizing the sale of the Property to the Buyer or to a successful overbidder at the hearing;
2. Approving the sale free and clear of all liens, claims, interests, and encumbrances and authorizing the Trustee to pay liens, costs of sale and other expenses directly from the sale proceeds, including escrow fees, taxes, and real estate commissions as set forth in the Motion;
3. Finding that the Buyer (Paul Stephens) is a "good faith" purchaser under § 363 (m);
4. Providing that the Trustee is authorized to execute and deliver any documents necessary to effectuate the proposed sale;
5. Finding that notice was proper and sufficient;
6. Approving the overbid procedures; and
7. Waiving the fourteen day stay under FRBP 6004(h).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Bernard Joseph O'Kelly

Represented By
Brian J Soo-Hoo

Movant(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Rika Kido

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Rika Kido

**United States Bankruptcy Court
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2:00 PM

6:13-26277 Charles Frederick Biehl

Chapter 7

Adv#: 6:15-01265 Pringle v. Clements-Biehl

#15.00 CONT Pre-Trial Conference RE: [1] Adversary case 6:15-ap-01265. Complaint by John P. Pringle against Rene Clements-Biehl. (Charge To Estate). (14 (Recovery of money/property - other)),(13 (Recovery of money/property - 548 fraudulent transfer))

From: 2/1/17, 3/29/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Frederick Biehl

Represented By
Daryl L Binkley - INACTIVE -
Steven L Bryson

Defendant(s):

Rene Clements-Biehl

Represented By
Allan D Sarver

Plaintiff(s):

John P. Pringle

Represented By
Elyza P Eshaghi
Brandon J Iskander

Trustee(s):

John P Pringle (TR)

Represented By
James C Bastian Jr
Elyza P Eshaghi

**United States Bankruptcy Court
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2:00 PM

CONT...

Charles Frederick Biehl

Brandon J Iskander

Chapter 7

**United States Bankruptcy Court
Central District of California
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Wednesday, May 31, 2017

Hearing Room 303

2:00 PM

6:14-17899 Gregory William Hewitt

Chapter 7

Adv#: 6:16-01235 Grobstein v. Hewitt

#16.00 CONT Status Conference RE: Adversary 6:16-AP-01235-MH Complaint by Howard B. Grobstein against Pamela Hewitt. Complaint: For Declaratory Relief; For Authority to Sell Real Property in Which Non-Debtor Asserts an Interest; For an Accounting; For Turnover of Property of the Estate; and, To Avoid and Recover Fraudulent Transfers Nature of Suit: (91 (Declaratory judgment, (Approval of sale of property of estate and of a co-owner - 363(h) (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy (11 (Recovery of money/property - 542 turnover of property

From: 12/7/16

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/30/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gregory William Hewitt

Represented By
Annie Verdries

Defendant(s):

Pamela Hewitt

Represented By
Annie Verdries

Plaintiff(s):

Howard B. Grobstein

Represented By
Michael W Davis
Nina Z Javan

Trustee(s):

Howard B Grobstein (TR)

Represented By

**United States Bankruptcy Court
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CONT...

Gregory William Hewitt

Michael W Davis
David Seror
Reed Bernet
Nina Z Javan

Chapter 7

**United States Bankruptcy Court
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Wednesday, May 31, 2017

Hearing Room 303

2:00 PM

6:16-15419 Francisco Javier Castillo

Chapter 7

Adv#: 6:16-01310 Swift Financial Corporation d.b.a. Swift Capital v. Castillo

#17.00 OSC why defendant's answer should not be stricken and default entered and defendant sanctioned for failure by defendant to appear at the initial status conference and participate in the preparation of the initial status report

EH__

Docket 9

***** VACATED *** REASON: CONTINUED TO 6/7/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco Javier Castillo

Represented By
Joseph M Tosti

Defendant(s):

Francisco Javier Castillo

Pro Se

Plaintiff(s):

Swift Financial Corporation d.b.a.

Represented By
Lazaro E Fernandez

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
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Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

11:00 AM

6:11-13230 Clyde Lee Jaso and Marie Lupe Jaso

Chapter 7

#1.00 Motion to Avoid Lien with Safeco Insurance

EH__

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Clyde Lee Jaso

Represented By
Gregory J Doan
Cheryl R Lee

Joint Debtor(s):

Marie Lupe Jaso

Represented By
Gregory J Doan
Cheryl R Lee

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
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Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:13-26468 Kathryn D Chavira

Chapter 13

#0.00 Trustee's Motion to Dismiss Case

EH__

Docket 89

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kathryn D Chavira

Represented By
James B Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:13-26468 Kathryn D Chavira

Chapter 13

#2.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Also #

EH__

Docket 92

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kathryn D Chavira

Represented By
James B Smith

Movant(s):

Kathryn D Chavira

Represented By
James B Smith
James B Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:15-19812 Miguel Vivar and Maria Vivar

Chapter 13

#3.00 Motion to Disallow Claims claim no 3 filed by Residential Mortgage care of Specialized Loan Servicing, LLC

Also #4

EH__

Docket 28

Tentative Ruling:

6/1/17

Background:

On October 6, 2015, Miguel & Maria Vivar ("Debtors") filed a Chapter 13 voluntary petition. On December 2, 2015, Debtors' Chapter 13 plan was confirmed.

On February 12, 2016, Residential Mortgage Solution LLC ("Creditor") filed an unsecured claim in the amount of \$39,838.55. On May 2, 2017, Debtors filed a claim objection.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *See Lundell v. Anchor Constr. Specialists, Inc.*, 223

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CONT... **Miguel Vivar and Maria Vivar**

Chapter 13

F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

The contract that forms the basis for Creditor's claim identifies Texas law as the applicable law. Debtors argue that Creditor's claim is barred by the applicable statute of limitations, although it does not appear Debtors identified the correct legal provision. Tex. Prop Code § 51.003(a) states:

- (a) If the price at which real property is sold at a foreclosure sale under Section 51.002 is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency, any action brought to recover the deficiency must be brought within two years of the foreclosure sale and is governed by

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CONT... Miguel Vivar and Maria Vivar
this section.

Chapter 13

Debtors stated that the real property that served as security for the purchase money note was foreclosed upon on May 5, 2009. Therefore, Creditor's claim is barred.

Furthermore, the Court deems failure to oppose to be consent to the relief requested pursuant to Local Rule 9013-1(h).

Tentative Ruling

The Court is inclined to SUSTAIN the objection.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Miguel Vivar

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Maria Vivar

Represented By
Rebecca Tomilowitz

Movant(s):

Maria Vivar

Represented By
Rebecca Tomilowitz
Rebecca Tomilowitz

Miguel Vivar

Represented By

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CONT... Miguel Vivar and Maria Vivar

Chapter 13

Rebecca Tomilowitz
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Hearing Room 303

12:30 PM

6:15-19812 Miguel Vivar and Maria Vivar

Chapter 13

#4.00 CONT Trustee's Motion to Dismiss Case

From: 5/4/17

Also #3

EH __

Docket 24

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miguel Vivar

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Maria Vivar

Represented By
Rebecca Tomilowitz

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:16-11303 Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

#5.00 CONT Trustee's Motion to Dismiss Case for Delinquency

From: 3/23/17, 4/27/17, 5/11/17

Also #6 - #8

EH__

Docket 56

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Robert Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:16-11303 Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

#6.00 CONT Trustee's Motion to Dismiss Case due to infeasibility of plan

From: 4/27/17, 5/11/17

Also #5 - #8

EH__

Docket 65

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Robert Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:16-11303 Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

#7.00 CONT Motion for Authority to Incur Debt [personal property]

From: 5/11/17

Also #5 - #8

EH__

Docket 60

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Robert Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joseph Robert Byrne

Represented By
Jenny L Doling
Jenny L Doling
Summer M Shaw
Summer M Shaw

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CONT... Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:16-11303 Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

#8.00 CONT Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

From: 3/23/17, 4/27/17, 5/11/17

Also #5 - #7

EH__

Docket 61

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Robert Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joseph Robert Byrne

Represented By
Jenny L Doling
Jenny L Doling
Summer M Shaw
Summer M Shaw

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CONT... Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-10681 Kisha Eugena Stegall-Hill

Chapter 13

#9.00 CONT Confirmation of Chapter 13 Plan

From: 3/9/17, 3/23/17, 4/27/17, 5/11/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kisha Eugena Stegall-Hill

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Hearing Room 303

12:30 PM

6:17-11901 Jose Camacho Payan and Erika Vanessa Payan

Chapter 13

#10.00 Motion RE: Objection to Claim Number 1 by Claimant Wescom Credit Union

EH__

Docket 16

Tentative Ruling:

6/1/17

Background:

On March 10, 2017, Jose & Erika Payan ("Debtors") filed a Chapter 13 voluntary petition. On March 14, 2017, Wescom Credit Union ("Creditor") filed a unsecured proof of claim in the amount of \$12,553.51 on the basis of a personal line of credit. On April 19, 2017, Debtors filed a claim objection. On May 9, 2017, Debtors' Chapter 13 plan was confirmed.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *See Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving

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CONT... **Jose Camacho Payan and Erika Vanessa Payan**

Chapter 13

rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Debtors argue that the statute of limitations is four years for Creditor's claim and that Creditor's claim is therefore barred. Cal. Code Civ. P. § 337(2) provides for a statute of limitations of four years for:

An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgement of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

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CONT... Jose Camacho Payan and Erika Vanessa Payan

Chapter 13

Cal. Code Civ. P. § 337(1) provides that the statute of limitations is also four years for claims based upon a contract.

The Court has reviewed Creditor's proof of claim and it appears that the applicable statute of limitations is four years pursuant to Cal. Code Civ. P. § 337. It additionally appears that Debtors have not made a payment on the claim in nearly nine years, and, therefore, the statute of limitations has expired.

Tentative Ruling

The Court is inclined to SUSTAIN the objection.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Jose Camacho Payan

Represented By
Ramiro Flores Munoz

Joint Debtor(s):

Erika Vanessa Payan

Represented By
Ramiro Flores Munoz

Movant(s):

Erika Vanessa Payan

Represented By
Ramiro Flores Munoz

Jose Camacho Payan

Represented By
Ramiro Flores Munoz

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CONT... Jose Camacho Payan and Erika Vanessa Payan

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:17-12420 Frank Castodio

Chapter 13

#11.00 CONT Confirmation of Chapter 13 Plan

From: 5/4/17

EH _____

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Castodio

Represented By
Lauren Rode

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:17-12710 Michael Montoya

Chapter 13

#12.00 CONT Confirmation of Chapter 13 Plan

From: 5/11/17

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Montoya

Represented By
Suzette Douglas

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-12793 Meghan McConaghy

Chapter 13

#13.00 Motion For Order Compelling Attorney To File Disclosure Of Compensation

CASE DISMISSED 4/24/17

EH__

Docket 15

Tentative Ruling:

6/1/17

BACKGROUND

On April 5, 2017, Meghan McConaghy ("Debtor") filed a Chapter 13 voluntary petition. On April 24, 2017, Debtor's case was dismissed for failure to file information.

On May 2, 2017, UST filed a motion to compel Debtor's attorney, Neil Hedtke ("Counsel"), to disclose compensation. On May 8, 2017, Counsel filed a disclosure of compensation. On May 11, 2017, Counsel filed his opposition to UST's motion.

DISCUSSION

UST's motion requests that the Court should order Counsel to file a statement of attorney compensation, and retain jurisdiction over any matter related to § 329.

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CONT... Meghan McConaghy

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11 U.S.C. § 329(a) states:

- (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payments or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

Counsel has filed the appropriate statement of attorney compensation. The Court will retain jurisdiction over any matter related to § 329.

TENTATIVE RULING

Counsel has filed the appropriate statement of attorney compensation. Subject to comments from the UST, the Court will retain jurisdiction over any matter related to § 329.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Meghan McConaghy

Represented By
Neil R Hedtke

Movant(s):

United States Trustee (RS)

Represented By
Abram Feuerstein esq

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CONT... Meghan McConaghy

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13107 Angel Benavidez

Chapter 13

#14.00 Motion to Avoid JUNIOR LIEN with Real Time Solutions

Also #15

EH__

Docket 17

Tentative Ruling:

Hearing Date: 6/1/17

Summary of the Motion:

Notice: Proper (verify)

Opposition: None

Address: 928 Alta St., Redlands, CA 92374

First trust deed: \$ 323,815.73 (mortgage statement dated 3/1/17)

Second trust deed (to be avoided): \$ 100,971.53 (payoff statement dated 5/1/17)

Fair market value (per appraisal & appraiser declaration): \$ 250,000 (dated 3/2/17)

TENTATIVE

The Court is inclined to GRANT the motion, avoiding the lien of Real Time Solutions upon receipt of a Chapter 13 discharge.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Angel Benavidez

Represented By
William P Mullins

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

CONT... Angel Benavidez

Chapter 13

Movant(s):

Angel Benavidez

Represented By
William P Mullins

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13107 Angel Benavidez

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

Also #14

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angel Benavidez

Represented By
William P Mullins

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13153 Christopher Grosey

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

***** VACATED *** REASON: CASE DISMISSED 5/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Grosey

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13165 Richard Ortiz and Dolores Ortiz

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Ortiz

Represented By
Elena Steers

Joint Debtor(s):

Dolores Ortiz

Represented By
Elena Steers

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13204 Hector Miguel Ortiz and Virginia Romero Ortiz

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hector Miguel Ortiz

Represented By
Rabin J Pournazarian

Joint Debtor(s):

Virginia Romero Ortiz

Represented By
Rabin J Pournazarian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13232 David B. Hertsgaard

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David B. Hertsgaard

Represented By
Timothy S Huyck

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13234 Steven Husbands

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Steven Husbands

Represented By
Timothy S Huyck

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13285 Jose Carlos Pina

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Carlos Pina

Represented By
Bryn C Deb

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13309 Annlyne Parsons

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

***** VACATED *** REASON: CASE DISMISSED 5/31/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Annlyne Parsons

Represented By
Robert S Altagen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13317 Catherine Mary Brown-Morris

Chapter 13

#23.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Catherine Mary Brown-Morris Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13338 Larry Eugene Bangert

Chapter 13

#24.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Larry Eugene Bangert

Represented By
Derik N Lewis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13339 Jane Engel

Chapter 13

#25.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

***** VACATED *** REASON: CASE DISMISSED 5/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jane Engel

Represented By
Peter L Nisson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13341 Abel Gonzalez

Chapter 13

#26.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

***** VACATED *** REASON: CASE DISMISSED 5/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Abel Gonzalez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13356 Silvia Alvarez

Chapter 13

#27.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

***** VACATED *** REASON: CASE DISMISSED 5/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Silvia Alvarez

Represented By
Filemon Kevin Samson III

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13360 Biani Berlenda Mora

Chapter 13

#28.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Biani Berlenda Mora

Represented By
Steven A Alpert

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13368 Brian William Bokon

Chapter 13

#29.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

***** VACATED *** REASON: CASE DISMISSED 5/15/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian William Bokon

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13394 Howard Edward Terrell, Jr.

Chapter 13

#30.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Howard Edward Terrell Jr.

Represented By
Paul Horn

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13395 Valecia Renee Knox

Chapter 13

#31.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Valecia Renee Knox

Represented By
L. Tegan Hurst

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13433 Christina Hill

Chapter 13

#32.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christina Hill

Represented By
Edward T Weber

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13464 Alvin M. Ching and Aphrodyte D. Ching

Chapter 13

#33.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alvin M. Ching

Represented By
Keith Q Nguyen

Joint Debtor(s):

Aphrodyte D. Ching

Represented By
Keith Q Nguyen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13474 Hermenegildo Morales

Chapter 13

#34.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

***** VACATED *** REASON: CASE DISMISSED 5/15/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hermenegildo Morales

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13523 Loretta Chavis

Chapter 13

#35.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Loretta Chavis

Represented By
Dan Perry

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13526 Howard Lamar Sanders and Jenique B. Sanders

Chapter 13

#36.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Howard Lamar Sanders

Represented By
D Justin Harelik

Joint Debtor(s):

Jenique B. Sanders

Represented By
D Justin Harelik

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13529 Mark R. Smith

Chapter 13

#37.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark R. Smith

Represented By
Patricia M Ashcraft

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13544 William Pitts

Chapter 13

#38.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

***** VACATED *** REASON: CASE DISMISSED 5/16/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Pitts

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13570 Joseph Quintin Marca

Chapter 13

#39.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

***** VACATED *** REASON: CASE DISMISSED 5/16/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Quintin Marca

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:30 PM

6:17-13583 William J Schaefer and Jennifer L. Schaefer

Chapter 13

#40.00 Confirmation of Chapter 13 Plan

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William J Schaefer

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Jennifer L. Schaefer

Represented By
Patricia M Ashcraft

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:31 PM

6:13-11372 Ernest B Galante and Susan D Galante

Chapter 13

#41.00 CONT Trustee's Motion to Dismiss Case

From: 3/23/17, 4/27/17, 5/18/17

EH__

Docket 116

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ernest B Galante

Represented By
Dale Parham - INACTIVE -
Michael Smith

Joint Debtor(s):

Susan D Galante

Represented By
Dale Parham - INACTIVE -
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:31 PM

6:13-17553 Kenneth Vernell Hawkins and Brenda A Hawkins

Chapter 13

#42.00 CONT Trustee's Motion to Dismiss Case

From: 3/23/17, 4/27/17, 5/11/17, 5/18/17

EH__

Docket 97

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth Vernell Hawkins

Represented By
Craig J Beauchamp

Joint Debtor(s):

Brenda A Hawkins

Represented By
Craig J Beauchamp

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:31 PM

6:13-19471 Adam Lee Miederhoff and Cheri Catherine Miederhoff

Chapter 13

#43.00 Trustee's Motion to Dismiss Case

EH__

Docket 53

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adam Lee Miederhoff

Represented By
Dana Travis

Joint Debtor(s):

Cheri Catherine Miederhoff

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:31 PM

6:14-23678 Liliana Gomez

Chapter 13

#44.00 Trustee's Motion to Dismiss Case

EH__

Docket 92

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liliana Gomez

Represented By
Matthew D Resnik
S Renee Sawyer Blume

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, June 01, 2017

Hearing Room 303

12:31 PM

6:16-10106 Eric Pieters Markel

Chapter 13

#45.00 Trustee's Motion to Dismiss Case

EH__

Docket 30

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/25/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eric Pieters Markel

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:31 PM

6:16-10604 Juan Manuel Plascencia De La Torre

Chapter 13

#46.00 Trustee's Motion to Dismiss Case

EH__

Docket 51

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Manuel Plascencia De La Torre

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:31 PM

6:16-11745 Alfredo Manzo Arrieta and Mayte Hernandez- Arrieta

Chapter 13

#47.00 Trustee's Motion to Dismiss Case

EH__

Docket 100

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alfredo Manzo Arrieta

Represented By
Andy C Warshaw

Joint Debtor(s):

Mayte Hernandez- Arrieta

Represented By
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:31 PM

6:16-12893 Natalie G Massie

Chapter 13

#48.00 Trustee's Motion to Dismiss Case

EH__

Docket 41

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Natalie G Massie

Represented By
Kevin M Cortright

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:31 PM

6:16-13388 James Leonard Blow, Jr. and Amanda Joyce Atkinson-Blow Chapter 13

#49.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Leonard Blow Jr.

Represented By
Jonathan D Doan

Joint Debtor(s):

Amanda Joyce Atkinson-Blow

Represented By
Jonathan D Doan

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:31 PM

6:16-16908 Oscar Chavez

Chapter 13

#50.00 Trustee's Motion to Dismiss Case

EH__

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oscar Chavez

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 01, 2017

Hearing Room 303

12:31 PM

6:16-16909 Edward Edmund Zozaya and Georgia Parrilla Zozaya

Chapter 13

#51.00 Trustee's Motion to Dismiss Case

EH__

Docket 77

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edward Edmund Zozaya

Represented By
Dana Travis

Joint Debtor(s):

Georgia Parrilla Zozaya

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, June 01, 2017

Hearing Room 303

12:31 PM

6:16-20553 Diana Cescolini

Chapter 13

#52.00 Trustee's Motion to Dismiss Case

EH__

Docket 28

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/18/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Diana Cescolini

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

10:00 AM

6:17-10604 James Edwin Horn and Nam-Yong Horn

Chapter 7

#1.00 Reaffirmation Agreement Between Debtor and American Honda Finance Corporation Re: 2016 Honda CRV

EH__

Docket 17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Edwin Horn Pro Se

Joint Debtor(s):

Nam-Yong Horn Pro Se

Trustee(s):

Howard B Grobstein (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

10:00 AM

6:17-10973 Dennis Patterson and Sandra McKay

Chapter 7

#2.00 Pro se Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc., dba Chrysler Capital re 14 Fiat 500L

EH__

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dennis Patterson	Pro Se
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Joint Debtor(s):

Sandra McKay	Pro Se
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Trustee(s):

Howard B Grobstein (TR)	Pro Se
-------------------------	--------

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

10:00 AM

6:17-11690 Theresa J Pritchard

Chapter 7

**#3.00 Pro se Reaffirmation Agreement Between Debtor and Global Lending Services
re 2014 Nissan Pathfinder**

EH__

Docket 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Theresa J Pritchard

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:13-22710 Jesus M. Tapia

Chapter 7

Adv#: 6:16-01265 Whitmore (TR) v. Davol, Inc. et al

#4.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01265. Complaint by Jesus Tapia against Davol, Inc., Bard Devices, Inc., C.R. Bard, Inc..
(Holding date)

From: 1/4/17, 2/1/17, 3/1/17, 4/12/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus M. Tapia

Represented By
Michael Smith

Defendant(s):

C.R. Bard, Inc.

Represented By
Christopher O Rivas

Bard Devices, Inc.

Represented By
Christopher O Rivas

Davol, Inc.

Represented By
Christopher O Rivas

Plaintiff(s):

Robert Whitmore (TR)

Represented By
Troy A Brenes

Trustee(s):

Robert Whitmore (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

CONT...

Jesus M. Tapia

Douglas A Plazak
Troy A Brenes

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:13-25919 Larry Jack Wadsworth and Sherilyn Denise Wadsworth

Chapter 7

#5.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 108

Tentative Ruling:

6/7/2017

No opposition has been filed.
Service was Proper.

The applications for compensation of the Trustee, Counsel for the Trustee, and Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, the Court is inclined to APPROVE the following administrative fees and expenses:

Trustee Fees: \$ 33,295.28

Attorney Fees: \$40,781.94

Attorney Costs: \$ 2,506.85

Accountant Fees: \$ 2,530

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Larry Jack Wadsworth

Represented By
Keith F Rouse

Joint Debtor(s):

Sherilyn Denise Wadsworth

Represented By

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Central District of California
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Wednesday, June 07, 2017

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11:00 AM

**CONT... Larry Jack Wadsworth and Sherilyn Denise Wadsworth
Keith F Rouse**

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Represented By
Richard K Diamond
Steven J Schwartz
Michael G D'Alba

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:15-10609 Donald W McCasland and Victoria F McCasland

Chapter 7

#6.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 95

Tentative Ruling:

6/7/17

No opposition has been filed.
Service was Proper.

The applications for compensation of the Trustee, Counsel for the Trustee, and Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 9,497.43

Trustee Expenses: \$ 454.37

Attorney Fees: \$ 42,308.50

Attorney Costs:\$ 797.60

APPEARANCES REQUIRED. Trustee to address September 29, 2016 order allowing claim of Richard Milewski as a general unsecured claim, on which basis the Trustee's final report appears incorrect.

Party Information

Debtor(s):

Donald W McCasland

Represented By
Ronald L Brownson

Joint Debtor(s):

Victoria F McCasland

Represented By

**United States Bankruptcy Court
Central District of California
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Wednesday, June 07, 2017

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11:00 AM

**CONT... Donald W McCasland and Victoria F McCasland
Ronald L Brownson**

Chapter 7

Trustee(s):

Karl T Anderson (TR)

Represented By
Robert A Hessling

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:10-22320 Rochelle A Lara

Chapter 7

#7.00 Motion of Trustee for Order Approving Settlement with Debtor

EH__

Docket 36

Tentative Ruling:

6/7/2017

BACKGROUND

On April 26, 2010, Rochelle Lara ("Debtor") filed a Chapter 7 voluntary petition. On August 16, 2016, Debtor received a discharge, and three days later, the case was closed.

On February 3, 2017, the case was reopened to administer a settlement award in the amount of \$174,349.78. On March 10, 2017, Debtor amended her schedules B & C to claim an exemption in the settlement awards pursuant to Cal. Code Civ. P. § 704.140. The Schedule C exemptions also removed exemptions of \$7,100 in cash and \$8,483 in anticipated tax refunds.

On May 1, 2017, Trustee filed a motion to approve compromise. Pursuant to the settlement, Trustee will receive \$24,750 from the settlement proceeds to distribute to creditors of the estate, and will release and abandon any right to the remainder.

DISCUSSION

**United States Bankruptcy Court
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CONT... Rochelle A Lara

Chapter 7

Fed. R. Bankr. P. Rule 9019(a) states: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct." The Court may grant approval if it determines that the compromise is "fair and equitable." *See In re Berkeley Delaware Court, LLC*, 834 F.3d 1036, 1039 (9th Cir. 2016). In determining whether the compromise is fair and equitable, the Court applies a four-factor test. *See In re DiCostanzo*, 399 Fed. Appx. 307, 308 (9th Cir. 2010). The test was originally outlined in *In re A & C Props.*, and provides for consideration of

- (a) The probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

784 F.2d 1377, 1381 (9th Cir. 1986) (quotation omitted). "The bankruptcy court has great latitude in approving compromise agreements." *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988). Typically, "a compromise should be approved unless it falls below the lowest point in the range of reasonableness." *In re Art & Architecture Books of the 21st Century*, 2016 WL 1118742 at *25 (Bankr. C.D. Cal. 2016) (quotation omitted).

Cal. Code Civ. P. § 704.140(b) provides that personal injury settlement awards can be exempted to the extent reasonably necessary for the support of the debtor. The primary argument raised by Trustee is that the extent to which Debtor's exemption may be reduced is highly uncertain, and that such a proceeding would involve complex facts and significant time and expenses. Given the complexity of the litigation required, and the consequent uncertainty regarding its prospects, in addition to the absence of any opposition to Trustee's motion, the Court finds that the proposed settlement is within the range of reasonableness.

TENTATIVE RULING

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CONT... Rochelle A Lara

Chapter 7

The Court is inclined to GRANT the motion, subject to discussion regarding how much of the settlement amount will be available to general unsecured creditors after payment of administrative expenses.

APPEARANCES REQUIRED. Movant's counsel may appear telephonically.

Party Information

Debtor(s):

Rochelle A Lara

Represented By
Brian C Fenn

Movant(s):

Karl T Anderson (TR)

Represented By
Robert A Hessling

Trustee(s):

Karl T Anderson (TR)

Represented By
Robert A Hessling

**United States Bankruptcy Court
Central District of California
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Wednesday, June 07, 2017

Hearing Room 303

11:00 AM

6:11-30939 Roberta Louise Clark

Chapter 7

#8.00 Motion to Disallow Claims #8 (Toyota Motor Credit Corporation)

EH__

Docket 97

Tentative Ruling:

6/7/17

Background:

On June 27, 2011, Roberta Clark ("Debtor") filed a Chapter 7 voluntary petition. On October 12, 2011, Debtor received a discharge.

On April 30, 2012, Toyota Motor Credit Corp. ("Creditor") filed an unsecured claim in the amount of \$22,145.54 on the basis of a car loan. On July 18, 2012, Creditor amended its proof of claim, asserting an unsecured claim in the amount of \$3,649.01.

On May 4, 2017, Trustee filed a claim objection. The Court notes that the Trustee did not use the mandatory claim objection form.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie*

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CONT... **Roberta Louise Clark**

Chapter 7

evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *See Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Creditor's claim was filed on April 30, 2012. The claims bar date was December 27, 2011. Therefore, Creditor's claim was not timely filed pursuant to Fed. R. Bankr. P. Rule 3002(c). Pursuant to 11 U.S.C. § 726(a)(2), tardily filed claims are subordinated to timely filed claims.

Furthermore, the Court deems failure to oppose to be consent to the relief requested pursuant to Local Rule 9013-1(h).

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CONT... Roberta Louise Clark

Chapter 7

Tentative Ruling

The Court is inclined to SUSTAIN the objection.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Roberta Louise Clark

Represented By
Robert L Firth

Movant(s):

Todd A. Frealy (TR)

Represented By
Robert P Goe

Trustee(s):

Todd A. Frealy (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
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6:09-30020 William Scott Graham and Rebecca Sue Graham

Chapter 7

#9.00 Motion of Trustee for Order: (1) Approving Settlement with Defendants; (2) Authorizing Trustee to Execute Documents Re Settlement; and (3) Authorizing Payments of Medical Liens

EH__

Docket 46

Tentative Ruling:

6/7/2017

BACKGROUND

On August 27, 2009, William & Rebecca Graham ("Debtors") filed a Chapter 7 voluntary petition. On January 12, 2010, Debtors received a discharge, and seven days later the case was closed.

On July 29, 2016, the case was reopened to administer settlement proceeds.

On January 17, 2017, Trustee filed a motion to approve compromise. That motion was denied on March 17, 2017. On May 1, 2017, Trustee filed another motion to approve compromise.

DISCUSSION

**United States Bankruptcy Court
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CONT... William Scott Graham and Rebecca Sue Graham

Chapter 7

Fed. R. Bankr. P. Rule 9019(a) states: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct." The Court may grant approval if it determines that the compromise is "fair and equitable." See *In re Berkeley Delaware Court, LLC*, 834 F.3d 1036, 1039 (9th Cir. 2016). In determining whether the compromise is fair and equitable, the Court applies a four-factor test. See *In re DiCostanzo*, 399 Fed. Appx. 307, 308 (9th Cir. 2010). The test was originally outlined in *In re A & C Props.*, and provides for consideration of

- (a) The probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

784 F.2d 1377, 1381 (9th Cir. 1986) (quotation omitted). "The bankruptcy court has great latitude in approving compromise agreements." *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988). Typically, "a compromise should be approved unless it falls below the lowest point in the range of reasonableness." *In re Art & Architecture Books of the 21st Century*, 2016 WL 1118742 at *25 (Bankr. C.D. Cal. 2016) (quotation omitted).

As occurred in the original 9019 motion, Trustee has requested that the Court approve the settlement agreement, without actually providing the Court with a copy of the settlement agreement, or attempting to file the settlement agreement under seal. Trustee has, however, clarified the details of the settlement agreement and, subsequent to the first hearing, obtained authorization to employ special counsel.

Because the settlement agreement would provide proceeds to pay allowed, unsecured claims in full, and in the absence of any opposition, the Court concludes that the *A&C* factors weigh in favor of approval of the settlement. Because creditors will be paid in full, the settlement is in the best interest of the estate, and there does not appear to be any plausible benefit of continuing to litigate the complex claim.

TENTATIVE RULING

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CONT... William Scott Graham and Rebecca Sue Graham

Chapter 7

The Court is inclined to GRANT the motion.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

William Scott Graham

Represented By
Edward G Topolski

Joint Debtor(s):

Rebecca Sue Graham

Represented By
Edward G Topolski

Movant(s):

Karl T Anderson (TR)

Represented By
Robert A Hessling

Trustee(s):

Karl T Anderson (TR)

Represented By
Robert A Hessling

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11:00 AM

6:10-13285 Laureen Martha Harley

Chapter 7

#10.00 CONT Motion objecting to debtor's claimed exemption in funds pursuant to California Code Of Civil Procedure Section 583.140

From: 4/26/17, 5/10/17

Also #11

EH__

Docket 35

***** VACATED *** REASON: CONTINUED TO 7/12/17 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laureen Martha Harley

Represented By

James M Powell - DISBARRED -

Michael H Raichelson

Trustee(s):

Steven M Speier (TR)

Represented By

Robert P Goe

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6:10-13285 Laureen Martha Harley

Chapter 7

#11.00 Motion Authorizing Compromise of Controversy Related to Mesh Claims Pursuant to Federal rules of Bankruptcy Rule 9019

Also #10

EH__

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laureen Martha Harley

Represented By
James M Powell - DISBARRED -
Michael H Raichelson

Movant(s):

Steven M Speier (TR)

Represented By
Robert P Goe

Trustee(s):

Steven M Speier (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
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11:00 AM

6:16-17769 Efren Diaz Estrada

Chapter 7

#12.00 CONT Motion to Convert Case From Chapter 7 to 13

From: 4/5/17, 5/17/17, 5/31/17

Also #13

EH__

Docket 33

Tentative Ruling:

04/05/17

BACKGROUND

On August 30, 2016 ("Petition Date"), Efren Estrada ("Debtor"), filed his petition for chapter 7 relief. Charles Daff is the duly appointed chapter 7 trustee ("Trustee"). On December 12, 2016, the Debtor received a chapter 7 discharge.

On March 14, 2017 (or approximately 7 months after the Petition Date and post-discharge), the Debtors filed their motion for conversion of their case to a case under chapter 13 ("Motion"). On March 22, 2017, the Trustee filed opposition to the Debtors' Motion ("Opposition"). On March 29, 2017, the Debtors filed their reply ("Reply").

DISCUSSION

The Trustee argues that the Debtor's Motion should be denied because it has been filed in bad faith and because the Debtor's chapter 7 discharge precludes conversion pursuant to this Court's holding in *In re Santos*, 561 B.R. 825, 829 (C.D. Cal. 2017).

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CONT... Efren Diaz Estrada

Chapter 7

In response, the Debtor asserts that he will propose a chapter 13 plan that would pay the creditors whose debts have presumably already been discharged in this case. The only basis advanced by the Debtor to support his contention that a Debtor can propose to pay already discharged debts in a post-discharge converted chapter 13 case is that a different Judge in the Central District permitted such conversion in another case known to Counsel for the Debtor. The Debtor, however, has not indicated the legal basis for this other court's ruling and such ruling would not be binding on this Court. Separately, the Court notes that although not expressly discussed in the Memorandum Decision on *Santos*, the Debtors in that case had also proposed to pay creditors whose debts had already been discharged at 100% through a confirmed chapter 13 plan. However, the bare promise that such a plan will be proposed where the Debtor's chapter 7 debts have already been discharged has no binding effect.

Having failed to distinguish *Santos*, the Court declines to reach the issues raised by the Trustee regarding alleged bad faith of the Debtor in failing to properly identify the nature of his interest in the Property.

TENTATIVE RULING

Based on the foregoing, and following the *Santos* holding, the Court finds that "cause" exists to deny the Debtor's request for conversion because the Debtor has received the benefits of a chapter 7 discharge and now seeks to avoid the concomitant burden of allowing the Trustee to administer the Debtor's assets for the benefit of creditors.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Efren Diaz Estrada

Represented By
W. Derek May

Movant(s):

Efren Diaz Estrada

Represented By
W. Derek May

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CONT... Efren Diaz Estrada

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W. Derek May

W. Derek May

Trustee(s):

Charles W Daff (TR)

Represented By

Lynda T Bui

Brianna L Frazier

Rika Kido

Ryan D ODea

**United States Bankruptcy Court
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6:16-17769 Efren Diaz Estrada

Chapter 7

#13.00 CONT Motion to Vacate Discharge to enable Conversion of Case to Chapter 13

From: 5/17/17, 5/31/17

Also #12

EH__

Docket 39

Tentative Ruling:

6/7/17

Background:

On August 30, 2016, Efren Estrada ("Debtor") filed a motion to vacate discharge. On Schedule A, Debtor listed certain real property located in Ontario, California (the "Property"), in which Debtor asserted an interest as joint tenant. Debtor estimated the value of the Property as \$385,000. On Schedule C, Debtor claimed an exemption in the Property of \$100,000 and, on Schedule D, Debtor listed Seterus as having a security interest in the Property in the amount of \$207,757. Therefore, the information identified in Debtor's schedules suggested that there was \$77,243 in equity in the property above Debtor's exemption.

On November 30, 2016, Trustee filed an application to employ general counsel. The application identified the potential sale of the Property as the primary justification for the employment of counsel. On December 12, 2016, Debtor received a discharge. On December 21, 2016, Trustee's application to employ general counsel was granted. Between January 17, 2017, and March 14, 2017, Debtor filed four substitutions of attorney. On February 21, 2017, the deadline for filing claims expired with no proofs of claim having been filed against the estate. Seven days later Trustee filed six

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CONT... **Efren Diaz Estrada**
unsecured proofs of claim totaling \$21,459.

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On March 14, 2017, Debtor filed a motion to convert to Chapter 13. On March 16, 2016, Debtor amended Schedules I & J, increasing monthly disposable income from \$0 to \$493. The increase was primarily attributable to a \$900 monthly increase in family contributions, from \$350 to \$1250. On March 22, 2017, Trustee filed his opposition to Debtor's motion to convert. Debtor filed a reply on March 29, 2017, indicating that he was willing and able to pay a 100% plan and would consent to a conversion order containing a condition that dismissal of the case would be prohibited without a hearing and notice to the Chapter 7 Trustee.

At a hearing on Debtor's motion to convert, the Court informed Debtor that it had recently held that a post-discharge conversion to Chapter 13 was generally inappropriate. *In re Santos*, 561 B.R. 825 (Bankr. C.D. Cal. 2017). Debtor indicated that he would file a motion to vacate discharge, and the Court continued the matter.

On April 26, 2017, Debtor filed a motion to vacate discharge. On May 3, 2017, Trustee filed his opposition to the motion.

Legal Analysis:

Debtor has relied upon Fed. R. Civ. P. Rule 60(b). Rule 60(b), made applicable to bankruptcy proceedings by Fed. R. Bankr. P. Rule 9024, states:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

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CONT... Efren Diaz Estrada

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- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable;
- (6) any other reason that justifies relief.

Debtor cites *In re Starling* for the proposition that Rule 60(b) can be utilized by a debtor to vacate a discharge. 359 B.R. 901 (Bankr. N.D. Ill. 2007). See also *In re Mosby*, 244 B.R. 79, 90 (Bankr. E.D. Va. 2000) ("The Court concurs with the reasoning in *Cisneros* and *Jones* and concludes that relief in the form of an order vacating a chapter 7 discharge may potentially be granted on motion of a debtor under Rule 60(b), Fed. R. Civ. P., as incorporated by Fed. R. Bankr. P. 9024."); *In re Hauswirth*, 242 B.R. 95, 97 (Bankr. N.D. Ga. 1999) ("Debtor's conversion to Chapter 13 before the Chapter 7 Trustee has completed the administration of the estate but after the discharge order is entered thwarts the proper operation of the Code, as it interrupts the complete administration intended by Congress. Pursuant to Bankruptcy Rule 9024, which incorporates FRCP 60, or, alternatively, pursuant to this court's authority under 11 U.S.C. § 105, the inconsistency of allowing a debtor two discharges in one case may be avoided by vacating a debtor's Chapter 7 discharge.").

As noted by *In re Starling*, there may be tension between the approach adopted by Debtor and the operation of 11 U.S.C. § 727(d), which provides the mechanism whereby a trustee, a creditor, or the United States Trustee can seek revocation of a debtor's discharge. While *In re Starling* concluded that the existence of § 727(d) does

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Chapter 7

not foreclose the ability to vacate a discharge pursuant to Rule 60(b), other courts have held to the contrary. *Compare* 359 B.R. at 913 with *In re Markovich*, 207 B.R. 909, 913 (B.A.P. 9th Cir. 1997) ("We agree with the bankruptcy court that it did not have the inherent equitable power to revoke a discharge outside the framework of § 727(d). The equity power of the bankruptcy court cannot be used to override specific statutory provisions in the Code."). Therefore, this Court must determine: (1) whether it is legally permissible for a debtor to utilize Rule 60(b) to vacate a discharge; and, if it is permissible, (2) whether the facts of this case warrant granting Debtor's motion to vacate discharge.

I. Application of Rule 60(b) to Discharge

A. Markovich & Starling

As noted above, *Markovich* and *Starling* represent opposite interpretations of the applicability of Fed. R. Civ. P. Rule 60(b) to discharge orders in light of § 727(d). *Markovich*, in concluding that § 727(d) precluded application of Rule 60(b) to discharge orders, summarily stated, after citing conflicting decisions, that: "[t]he equity powers of the bankruptcy court cannot be used to override specific statutory provisions in the Code." This statement, without greater legal analysis, is not compelling. Important in interpreting the discussion in *Markovich* is footnote 2 therein, which states, in part: "[t]he soundness of this argument is questionable since nothing was to be gained by moving to vacate the discharge in Debtor's chapter 7 case. The nondischargeable claim could be discharged in either a converted chapter 13 or a new chapter 13 case filed by Debtor." Contextually, the *Markovich* court believed that Debtor's request to vacate discharge was unnecessary,¹ an important consideration in interpreting the Court's decision to summarily affirm the bankruptcy court.

In re Starling, however, meticulously analyzes the same issues that the Court is confronted with here. First, *Starling* noted that the decision in *Disch v. Rasmussen*, 417 F.3d 769 (7th Cir. 2005), precluded the court from relying on § 105(a) to allow the

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Chapter 7

debtor to vacate its discharge. 359 B.R. at 913. Nevertheless, the *Disch* court noted that it was legally permissible for a discharge order to be vacated through the use of Fed. R. Civ. P. Rule 60:

Final bankruptcy orders can be set aside under Bankruptcy Rule 9024, *see In re Met-L-Wood Corp.*, 861 F.2d 1012, 1018 (7th Cir. 1988), and nothing in the rule indicates that it does not apply to the revocation of discharges.

417 F.3d 769, 778 (7th Cir. 2005). *Starling* adopted the reasoning in *Disch*, stating: "based on the Seventh Circuit's decision in *Rasmussen*, it is within discretion here to vacate the order of discharge based on one of the reasons listed in Rule 60(b) Fed. R. Civ. P., should any be applicable." 359 B.R. at 913.

Notably, as identified in *Disch*, the Ninth Circuit Court of Appeals has noted that Rule 60(b) could be used to vacate a discharge in a Chapter 13 case. *In re Cisneros*, 994 F.2d 1462, 1466 (9th Cir. 1993) ("Section 1328(e) therefore does not conflict with Rule 9024 as applied by the bankruptcy court. . . . The bankruptcy court and the BAP therefore properly rejected the Debtors' argument that section 1328(e) serves to limit the power conferred upon the court by Rule 60(b) through Bankruptcy Rule 9024.)² Trustee has not made an attempt to distinguish the discharge revocation provision in Chapter 13 from the discharge revocation provision in Chapter 7, but instead cites a case from the United States Bankruptcy Court, Eastern District of Pennsylvania, *In re Nader*, 1998 Bankr. LEXIS 1381 at *13-14 (Bankr. E.D. Pa. 1998), which limited the scope of *Cisneros* based on a Third Circuit Court of Appeals decision, *In re Fesq*, 153 F.3d 113 (3rd Cir. 1998). This Court does not have the same discretion – *Cisneros* is binding on this court to the extent the analysis is applicable to a Chapter 7 case, and *Fesq* is merely persuasive. Therefore, the Court will not adopt a narrow reading of *Cisneros* in deference to *Fesq*.

B. Relationship Between Fed. R. Civ. P. Rule 60(b) and 11 U.S.C. § 727(d)

The tension between the *Markovich* and *Starling* decisions rests in their conflicting

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interpretations of whether the statutory interpretation doctrine of *expression unius est exclusion alterius* necessitates a conclusion that the operation of § 727(d) results in field pre-emption. More specifically, the reasoning illustrated by *Markovich* stands for the proposition that because Congress detailed procedures for the revocation of discharge in § 727(d), it is improper for a bankruptcy court to interpret the Fed. R. Civ. P. as providing additional grounds for the revocation of discharge. *See generally* 207 B.R. at 913.

On the other hand, *Starling* interprets the scope of § 727(d) more narrowly, concluding that while the statute provides the mechanism by which a trustee, creditor, or the United States Trustee may obtain a revocation of discharge, it does not govern or limit attempts by a debtor to revoke his or her own discharge. 359 B.R. at 914. *Starling* notes that the mechanism for revocation of discharge in the Bankruptcy Act of 1898 (11 U.S.C. § 33) explicitly included any party in interest, and that the phrase "any other party in interest" was deleted in the drafting of the Bankruptcy Code. *Id.* The removal of that phrase is not conclusive, however, because it could either be interpreted as implying a Congressional intent to eliminate the ability of a debtor to seek revocation of a discharge, or as simply implying that Congress no longer intended for that provision to apply to debtors.

The Court concludes that it is implausible to assert that § 727(d) is literally the *only* mechanism by which a discharge could be revoked. For instance, if the granting of a discharge was a clerical error, the Court could revoke the discharge pursuant to Fed. R. Civ. P. Rule 60(a). *See, e.g., In re Ali*, 219 B.R. 653, 655 (Bankr. E.D.N.Y. 1998). Therefore, it is not accurate that § 727(d) governs the entire universe of reversing a discharge. Instead, it is a question of scope, i.e., what mechanism(s) other than 727(d) can vacate or revoke a discharge? Without endeavoring to determine all such mechanisms, as shown below, a Rule 60(b) motion brought by a debtor appears to be one such mechanism.

The Court notes that there is a simple and logical reason that a debtor is not among the parties identified as having express standing to pursue a revocation of discharge pursuant to § 727(d): all of the enumerated grounds for such a request pertain to bad acts of the debtor. Indeed, § 727(d) appears designed for the sole purpose of punishing debtors who act in bad faith or fail to fulfill statutory duties. Clearly, implicit in the statute is an assumption that the provision will be utilized in cases

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where the debtor wishes to retain his discharge.

Therefore, § 727(d) is completely silent as to a situation where a debtor wishes to vacate his discharge. This situation is categorically distinct from the type of situation contemplated by § 727(d) in two important respects: (1) the debtor does not wish to retain his discharge; and (2) the debtor has not committed a bad faith act. These two distinctions create a fundamentally different situation. And while § 727(d) serves a coercive function, encouraging complying with statutory duties, Rule 60(b) serves a corrective function, ensuring that justice is equitably administered. Because § 727(d) serves a fundamentally different purpose and is applicable in fundamentally different situations, the Court concludes that, in accordance with *Disch* and *Starling*, § 727(d) does not preclude a debtor's use of Rule 60(b) to revoke a discharge.

This conclusion does not violate the canon of *expressio unius est exclusio alterius* because, as noted by *Starling*, the Supreme Court has stated:

[a]s we have held repeatedly, the canon *expressio unius est exclusio alterius* does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an "associated group or series," justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence.

Barnhart v. Peabody Coal Co., 537 U.S. 149, 168 (2003). In the context of § 727(d), a debtor is not part of the same "associated group or series," as the expressed parties – when § 727(d) is invoked, the debtor's interests and goals are typically diametrically opposed. *See generally* 359 B.R. at 915 ("Moreover, one cannot reasonably argue that a debtor falls within the 'associated group or series' listed in the statute in order to apply the *Expressio Unius* doctrine. The interests of a Chapter 7 debtor are not identical or even remotely similar to those of a trustee, creditors or the United States trustee."). It simply bends logic to make a substantive legal inference that § 727 bars a debtor's request where a debtor is not among the parties identified as having standing to bring a § 727(d) motion, and a § 727(d) motion is only designed to punish or coerce a debtor.

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Certainly, strong policy considerations exist to ensure that debtors are free from any harassment or pressure to vacate a discharge. To find otherwise and to allow a debtor to vacate his discharge without close scrutiny would undermine the bedrock principle of a debtor's fresh start. As discussed below, the circumstances of this case do not present that situation.

II. Application of Rule 60(b) to Facts of Case

Debtor argues that Rule 60(b)(1), (5), and (6) justify vacation of discharge in this case. Rule 60(b)(1) provides four disjunctive grounds for relief: (1) mistake; (2) inadvertence; (3) surprise; and (4) excusable neglect. In referring to the Rule, Debtor mentions excusable neglect and surprise, although Debtor does not provide legal standards for either. In discussing Rule 60(b)(5), Debtor has identified the final provision, "or applying it [the judgment] prospectively is no longer equitable," but, again, there is no legal analysis. Factually, Debtor makes two arguments that he believes could support granting the motion in accordance with at least one of the legal provisions: (1) ineffective assistance of counsel; and (2) a belief that the post-discharge conversion was allowed. Ultimately, both Debtor and Trustee have primarily focused on briefing the issues presented in section I, *supra*, and the discussion of the application of Fed. R. Civ. P. Rule 60(b) to the facts of this case is somewhat lacking.

A. Ineffective Assistance of Counsel

Courts disagree about whether, and in what circumstances, attorney error justifies relief under Fed. R. Civ. P. 60(b). Judge Easterbrook has held that attorney negligence is never an acceptable basis for relief under the rule. *See U.S. v. 7108 West Grand Ave., Chicago, Ill.*, 15 F.3d 632, 633-35 (7th Cir. 1994) ("Yet why should the label 'gross' make a difference to the underlying principle: that the errors and misconduct of an agent rebound to the detriment of the principal rather than of the adversary in litigation?"). The Ninth Circuit has disagreed, holding that in cases of "gross

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negligence" relief is warranted under Fed. R. Civ. P. 60(b)(6). *Cnty Dental Servs. V. Tani*, 282 F.3d 1164 (9th Cir. 2002) ("While the above principles provide the general rule regarding the client-attorney relationship, several circuits have distinguished a client's accountability for his counsel's neglectful or negligent acts – too often a normal part of representation – and his responsibility for the more unusual circumstance of his attorney's extreme negligence or egregious conduct."). And, on the other hand, the Ninth Circuit has found ordinary carelessness to be grounds for relief when there exists an extraordinary or unusual extrinsic cause.³ *See, e.g., Medina v. Wells Fargo Bank, N.A.*, 2016 WL 2944295 at *2 (C.D. Cal. 2016) (collecting cases). There is, however, much space on the spectrum between gross negligence (when an attorney is no longer acting on behalf of a client) and ordinary "carelessness" in which relief under 60(b) will be granted.

Furthermore, there is a tendency to distinguish between a deliberative mistake with unintended consequences and an inadvertent attorney error. *Parks v. Armour Pharms.*, 1995 WL 13232 at *1 (N.D. Cal. 1995) ("This case is distinguishable from that in *Nemaizer v. Baker*, 793 F.2d 58 (2nd Cir. 1986), wherein the dismissal with prejudice was based upon a stipulation with defense counsel and an apparent misunderstanding by plaintiff of the effect of the stipulation. Here, plaintiffs' counsel and his secretary unilaterally and inadvertently filed a dismissal containing unintended 'with prejudice' language. They did not fail to appreciate the effect of the dismissal with prejudice; they failed to realize what they inadvertently filed.").

The distinction noted in *Parks* is illustrative of the problem here. As *Parks* notes, a party should not be allowed to modify past decisions that were deliberately chosen solely because the party did not comprehend the consequences of the decision. Alternatively, a party should not be forced to maintain a position it inadvertently adopted if there is little risk of significant prejudice to the other party. Here, it cannot be seriously contended that the filing of a Chapter 7 petition was an inadvertent action, as contrasted with an intentional act, the consequences of which Debtor did not entirely comprehend. Additionally, there is no indication that the alleged attorney negligence reached the level of gross negligence which would sever the agent-principal relationship. Finally, there is no indication that there were any acts that resemble the type of ordinary "carelessness" that courts have determined can be the basis for relief under Rule 60(b).

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B. Change in Law

While not adequately briefed, Debtor also seems to suggest that the Court's *Santos* decision constitutes an intervening change in law. [Dkt. 39, p. 6: "The intervening case of *In re Santos*, which expressly limited if not eliminated the Debtor's right to convert after discharge, is a further basis to rule that it is no longer equitable that the discharge order should have prospective effect, because it extremely limited the Debtor's ability to convert to Chapter 13 after receipt of a Chapter 7 discharge."]. *Santos* did not constitute a change in law, but, rather, the case applied the Supreme Court's *Marrama* decision to a motion to convert post-discharge. A trial court simply does not change law.

C. Miscellaneous: 60(b)(5) & 60(b)(6)

The Court interprets Debtor's invocation of Rule 60(b)(5) and (6) as not being solely constrained to the factual arguments made above.

The final prong of Rule 60(b)(5), a general equitable prong, is not applicable in the present situation because the rule applies to judgments that have prospective application, typically indicated by the potential for continuing supervision. *See, e.g., Sys. Fed'n No. 91 v. Wright*, 364 U.S. 642, 647-48 (1961) ("A balance must thus be struck between the policies of res judicata and the right of the court to apply modified measures to changed circumstances."); *Normva v. Elkin*, 849 F.Supp.2d 418, 423-24 (D. Del. 2012(collecting cases on prospective application). "The standard used in determining whether a judgment has prospective application is whether it is "executory" or involves the supervision of changing conduct or conditions." *Maraziti v. Thorpe*, 52 F.3d 252, 254 (9th Cir. 1995) (quotation omitted). A discharge is not a prospective judgment.

Finally, Debtor cites Fed. R. Civ. P. Rule 60(b)(6), the equitable, catchall provision. "That clause gives the [] court power to vacate judgments 'whenever such action is

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appropriate to accomplish justice." *U.S. v. Sparks*, 685 F.2d 1128, 1130 (9th Cir. 1982) (quoting *Klapprott v. U.S.*, 335 U.S. 601, 615 (1949)). "In order to obtain such relief from a judgment, however, 'extraordinary circumstances' must exist." *Id.* (quoting *Ackerman v. U.S.*, 340 U.S. 193, 199 (1950)). Rule 60(b)(6) is, however, potentially applicable to the case here. See, e.g., *Espinosa v. United Student Aid Fund, Inc.*, 553 F.3d 1193, 1199 (9th Cir. 2008) ("After a judgment (*including a discharge*) is finalized, and the time for appeal has run, the judgment can only be reconsidered in the limited circumstances provided by Rule 60(b).") (emphasis added).

As a preliminary matter, as to the Rule 60(b)(6) "exceptional" or "extraordinary circumstance" standard, Rule 60(b)(6) must be interpreted in its applicable context. The court in *Santos* stated that: "[T]here is no absolute prohibition on converting a case from Chapter 7 to Chapter 13 post-discharge, but pre-closing; rather there is a § 1307(c) 'for cause' review." 561 B.R. 825, 830 (Bankr. C.D. Cal. 2017). The court noted its belief that a post-discharge conversion appeared to be presumptively an abuse of process. See *generally id.* at 830-31. Nevertheless, as discussed in *Santos*, certain factual situations could be considered sufficient to rebut the presumption that conversion is an abuse of process. Vacating the discharge, a procedure the debtors did not attempt in *Santos*, along with agreeing to procedures that eliminate or substantially reduce the potential prejudice to any other parties, indicate the absence of abuse of process.

In order to secure conversion in this case, however, Debtor must meet two standards. First, Debtors must satisfy the standard of Rule 60(b)(6) to vacate the discharge, then Debtors must overcome the presumption that conversion is an abuse of process. If the former standard is higher than the latter, the result is illogical: there would be a certain subset of cases in which the latter standard would be satisfied, but the Rule 60(b)(6) standard would not be satisfied. For instance, in this situation, assuming, *arguendo*, that Debtor failed to show the necessary extraordinary circumstances, it may be reasonable to conclude that the facts of the case and the conduct of Debtor overcome the presumption that post-discharge conversion would be an abuse of process, and the result would be that Debtor would be allowed to convert, and retain his discharge. That result is illogical and untenable.

Therefore, utilizing an interpretation of Rule 60(b)(6)'s "any other reason that justifies relief" that imposes a standard higher than that required to rebut the presumption that

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conversion is an abuse of process would frustrate the reasoning of *Marrama* as applied to these circumstances, and as thoroughly discussed in *Santos*. See generally *id.* at 829-31. Cognizant of that fact, the Court concludes that the Supreme Court's *Marrama* decision requires the Court to consider the interests of justice when considering a Rule 60(b)(6) motion to revoke a discharge, and that the "extraordinary circumstance" test must be interpreted in light of the reasoning in *Marrama*.

In the case at hand, there are three primary sets of facts that, in combination, the Court believes rise to the level of "extraordinary circumstances" and contribute to finding that vacating the discharge is necessary to further justice: (1) evidence that Debtor's alleges that his original counsel gave him inaccurate and incomplete legal advice regarding his choices in bankruptcy and the effect bankruptcy may have on his home; (2) no creditors have participated in this case, and the only claims filed were filed by the Trustee (the claims were also filed after the entry of discharge); and (3) Debtor has proposed a Chapter 13 plan which will pay creditors 100%.

This represents the rare situation in which the debtor is the party that seeks to revoke the discharge and thereafter pay all creditors in full, including Trustee for his professional fees. Thus, the revocation of the discharge will not meaningfully impair the rights of any other parties, but, instead would simply fulfill a prerequisite to Debtor's conversion to Chapter 13, thereby facilitating payment in full to creditors. Only the conversion of the case, not the vacation of discharge, may be said to modify the rights of any party in interest. And even then, any impairment would merely be that the creditors for whom Trustee filed a proof of claim will be paid over a longer period of time.

Based on the foregoing, the Court is left with the clear impression that revocation of the discharge is required to prevent manifest injustice pursuant to Rule 60(b)(6). Furthermore, the efforts undertaken by Debtor to remedy a situation apparently produced by ineffective legal counsel, namely Debtor's efforts to vacate his Chapter 7 discharge and propose a plan that pays 100 percent to creditors and minimizes, to the extent possible, any prejudice to other parties, establishes that conversion, after the discharge is vacated, would not be an abuse of process in this situation.

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TENTATIVE RULING

The Court is inclined to GRANT the motion and VACATE the discharge.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Efren Diaz Estrada

Represented By
W. Derek May

Movant(s):

Efren Diaz Estrada

Represented By
W. Derek May
W. Derek May
W. Derek May

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Brianna L Frazier
Rika Kido
Ryan D ODea

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6:16-18319 YBF Tax, Inc.

Chapter 7

#14.00 Motion/Objection to Disallow Claim of Rosa Bryant (Claim No 2)

EH__

Docket 34

Tentative Ruling:

6/7/17

Background:

On September 16, 2016, YBF Tax, Inc. filed a Chapter 7 voluntary petition. On January 24, 2017, Rosa Bryant ("Creditor") filed an unsecured claim in the amount of \$2,500,000 on the basis of the pending lawsuit. On May 12, 2017, Debtor filed a claim objection.

The Court notes that Debtor did not use the mandatory claim objection form or the mandatory proof of service form. Additionally, Debtor's claim objection is not supported by any admissible evidence.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim,

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that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Debtor objects to Creditor's claim on the basis that it "has not been litigated to a decision." That is not a valid basis to file a claim objection. 11 U.S.C. § 101(5)(A) states:

(5) The term "claim" means –

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,

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disputed, undisputed, legal, equitable, secured, or unsecured

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Debtor's claim, therefore, fits within the statutory definition of claim. Moreover, § 502(c) expressly allows the Court to estimate an unliquidated claim.

Tentative Ruling

The Court is inclined to OVERRULE the objection.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

YBF Tax, Inc.

Represented By
Ronald W Ask

Movant(s):

YBF Tax, Inc.

Represented By
Ronald W Ask
Ronald W Ask

Trustee(s):

Karl T Anderson (TR)

Represented By
Lovee D Sarenas

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6:16-20058 Kellie Eugena Malveaux

Chapter 7

#15.00 Motion to Withdraw as Attorney

EH__

Docket 21

Tentative Ruling:

6/7/17

BACKGROUND

On November 11, 2016, Kellie Malveaux ("Debtor") filed a Chapter 7 voluntary petition. On February 21, 2017, Debtor received a discharge. The meeting of creditors has been repeatedly continued.

On May 8, 2017, Mona Patel ("Counsel") filed a motion to withdraw.

DISCUSSION

Local Rule 2091 provides the procedure for an attorney to withdraw as counsel of record.

Movant has not presented any evidence, however, in support of the motion.

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TENTATIVE RULING

The Court is inclined to CONTINUE the hearing for Movant to present evidence in support.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Kellie Eugena Malveaux

Represented By
Mona V Patel

Movant(s):

Kellie Eugena Malveaux

Represented By
Mona V Patel
Mona V Patel

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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6:17-10546 Robert M. Rubalcaba and Brasenia Rubalcaba

Chapter 7

#16.00 Motion for extension of time to file a complaint objecting to discharge

EH__

Docket 22

Tentative Ruling:

6/7/2017

BACKGROUND

On January 23, 2017, Robert & Brasenia Rubalcaba filed a Chapter 7 voluntary petition. The meeting of creditors was originally scheduled for March 2, 2017, and has been continued at least three times.

On May 1, 2017, Trustee filed a motion for an extension of time to file a complaint objecting to discharge.

DISCUSSION

Fed. R. Bankr. P. Rule 4004(a) states:

- (1) In a chapter 7 case, a complaint, or a motion under § 727(a)(8) or (9) of the Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 case, the complaint shall be filed no later than the first date set for the hearing on confirmation. In a chapter 13 case, a motion objecting to the debtor's discharge under § 1328(f) shall be filed no later than 60 days

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after the first date set for the meeting of creditors under § 341(a). At least 28 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.

And Fed. R. Bankr. P. Rule 4004(b) states:

- (1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.
- (2) A motion to extent the time to object to discharge may be filed after the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.

Here, Debtor's delay in providing the requested information constitutes sufficient cause to extend the deadline. *See* Collier on Bankruptcy ¶ 4004.03[2] (16th ed. 2013) ("A debtor's delays in responding to discovery may be sufficient cause. Obviously, a delay in the meeting of creditors to a date close to or after the deadline may constitute such cause.") (*citing In re McCormack*, 244 B.R. 203 (Bankr. D. Conn. 2000)).

Moreover, Debtor's failure to oppose may be deemed consent to the relief requested pursuant to Local Rule 9013-1(h).

TENTATIVE RULING

The Court is inclined to GRANT the motion.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

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Party Information

Debtor(s):

Robert M. Rubalcaba

Represented By
David L Nelson

Joint Debtor(s):

Brasenia Rubalcaba

Represented By
David L Nelson

Movant(s):

Steven M Speier (TR)

Pro Se

Trustee(s):

Steven M Speier (TR)

Pro Se

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6:17-12976 Modern Properties, LLC

Chapter 7

#17.00 Motion to Vacate Dismissal of Case

EH__

Docket 12

***** VACATED *** REASON: CONTINUED TO 6/28/17 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Modern Properties, LLC

Represented By
Robert L Firth

Movant(s):

Larry D Simons (TR)

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

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2:00 PM

6:03-15174 Devore Stop A General Partners

Chapter 7

Adv#: 6:12-01498 Morschauser v. Continental Capital LLC et al

#18.00 CONT Status Conference RE: [1] Complaint by William G Morschauser against Continental Capital LLC , Stephen Collias , Jesse Bojorquez , American Business Investments , Mohammed Abdizadeh . (91 (Declaratory judgment)) , (72 (Injunctive relief - other))

HOLDING DATE

From: 3/11/15, 5/20/15, 7/29/15, 12/16/15, 2/3/16, 3/16/16, 5/11/16, 8/31/16, 11/2/16, 11/16/16, 3/8/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 7/26/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Devore Stop

Represented By
Hutchison B Meltzer

Devore Stop A General Partners

Represented By
Arshak Bartoumian - DISBARRED -
Newton W Kellam

Defendant(s):

American Business Investments

Represented By
Lawrence J Kuhlman
Autumn D Spaeth ESQ

Mohammed Abdizadeh

Pro Se

Jesse Bojorquez

Represented By
Lawrence J Kuhlman
Autumn D Spaeth ESQ

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CONT... Devore Stop A General Partners

Chapter 7

Continental Capital LLC

Represented By
Cara J Hagan

Stephen Collias

Represented By
Cara J Hagan

Plaintiff(s):

William G Morschauser

Represented By
Hutchison B Meltzer
Reid A Winthrop

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
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6:11-47448 Allen Brandon Eley

Chapter 7

Adv#: 6:16-01086 Eley v. National Collegiate Student Loan

#19.00 CONT Motion to Compel Further Discovery Responses from Defendant to Plaintiff's First Request For Production of Documents and First Set of Interrogatories, and Request For Attorney's Fees, Costs and Sanctions
HOLDING DATE

From: 2/8/17, 4/26/17

EH__

Docket 15

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/1/17**

Tentative Ruling:

02/08/2017

Given the Court's intention to GRANT defendant's Motion for Summary Judgment and dismiss the adversary proceeding, this Motion shall go off calendar as moot.

Party Information

Debtor(s):

Allen Brandon Eley

Pro Se

Defendant(s):

National Collegiate Student Loan

Represented By
Damian P Richard
Debbie P Kirkpatrick

Movant(s):

Allen Brandon Eley

Represented By
David Brian Lally

Plaintiff(s):

Allen Brandon Eley

Represented By

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CONT... Allen Brandon Eley

David Brian Lally

Chapter 7

Trustee(s):

Steven M Speier (TR)

Pro Se

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6:13-14986 David Wayne Wakefield

Chapter 7

Adv#: 6:13-01233 Continental East Fund IV, LLC v. Wakefield et al

#20.00 CONT Status Conference re: Adversary case 6:13-ap-01233. Complaint by Continental East Fund IV, LLC against David Wakefield, Elise Wakefield. false pretenses, false representation, actual fraud

From: 9/18/13. 2/12/14, 4/23/14, 8/20/14, 10/1/14, 10/22/14, 1/14/15, 2/18/15, 6/17/15, 8/26/15, 9/2/15, 11/18/15, 5/18/16, 5/25/16, 7/27/16, 1/11/17, 4/12/17, 5/17/17

EH__

Docket 1

***** VACATED *** REASON: ADVERSARY DISMISSED - ORDER
ENTERED 5/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Wayne Wakefield

Represented By
Jordan Nils Bursch
Robert E Huttenhoff

Defendant(s):

Elise Wakefield

Represented By
Robert E Huttenhoff

David Wakefield

Represented By
Robert E Huttenhoff

Joint Debtor(s):

Elise Wakefield

Represented By
Jordan Nils Bursch
Robert E Huttenhoff

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CONT... David Wayne Wakefield

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Plaintiff(s):

Continental East Fund IV, LLC

Represented By
Kyra E Andrassy
William A Floratos

Trustee(s):

Howard B Grobstein (TR)

Represented By
Alan W Forsley

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6:16-18917 Jiangmin Li

Chapter 7

Adv#: 6:17-01004 Qiu v. Li

#21.00 CONT Motion to Dismiss Adversary Proceeding

From: 3/8/17, 4/26/17

Also #22

EH__

Docket 7

***** VACATED *** REASON: ADVERSARY CASE DISMISSED 5/23/17**

Tentative Ruling:

3/8/17

BACKGROUND

On October 5, 2016, Jiangmin Li ("Defendant") filed a Chapter 7 voluntary petition.

On January 9, 2017, Dongxia Qiu ("Plaintiff") filed an adversary complaint against Defendant, seeking a non-dischargeability finding. On February 8, 2017, Defendant filed a motion to dismiss for failure to state a claim. On February 22, 2017, Plaintiff filed her opposition. On March 3, 2017, Defendant filed a late reply.

The adversary complaint arises from state court litigation between the two parties. Plaintiff's state court complaint included ten causes of action: (1) intentional misrepresentation; (2) negligent misrepresentation; (3) rescission – fraud; (4) rescission – mistake; (5) conversion; (6) breach of fiduciary duty; (7) imposition of constructive trust; (8) accounting; (9) unjust enrichment; and (10) breach of written contract. The Court ruled in favor of Plaintiff on her fourth (rescission – mistake) and

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CONT...

Jiangmin Li

Chapter 7

sixth (breach of fiduciary duty) causes of action. The Court ruled against Plaintiff on the first (intentional misrepresentation) and third (rescission – fraud) causes of action. The Court deemed the second, fifth, seventh, eighth, ninth, and ten causes of action to have been forfeited due to Plaintiff's failure to adequately brief the issues.

DISCUSSION

Fed. R. Civ. P. Rule 12(b)(6) states:

(b) Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(6) failure to state a claim upon which relief can be granted

Fed. R. Civ. P. Rule 12(d) states:

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

Here, Defendant has submitted a request for judicial notice, so the Court must initially determine whether to grant or deny the request. Pursuant to Fed. R. Civ. P. Rule 12(b)(6), granting a request for judicial notice may cause the Court to convert the motion to a motion for summary judgment. *See, e.g., Jacobson v. AEG Capital Corp.*, 50 F.3d 1493, 1496 (9th Cir. 1995) ("In considering AEG's motion to dismiss, the district court took judicial notice of the extensive records and transcripts from the prior bankruptcy proceedings. We therefore review the district court's dismissal as an order granting summary judgment."). The Court may "consider unattached evidence

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CONT... Jiangmin Li

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on which the complaint 'necessarily relies' if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the document," without converting the motion to a motion for summary judgment. *See U.S. v. Corinthian Colls.*, 655 F.3d 984, 999 (9th Cir. 2011).

Here, the unattached evidence contained in Defendant's request for judicial notice satisfies the above test. Plaintiff necessarily relied on the documents. In fact, the Plaintiff appears to have erroneously omitted the documents when filing the complaint, since the complaint purports to attach the three documents and references the documents throughout. Therefore, the Court will grant the request for judicial notice, and evaluate the motion as a motion to dismiss for failure to state a claim.

The standard for a Rule 12(b)(6) motion to dismiss is the following:

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. Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true. . . . The need at the pleading stage for allegations plausibly suggesting agreement reflects the threshold requirement of Rule 8(a)(2) that the "plain statement" possesses enough heft to "show that the pleader is entitled to relief.

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-57 (2007) (quotations and parentheses omitted).

Here, Plaintiff states two causes of action, both relating to non-dischargeability, under 11 U.S.C. § 523(a)(4) and (6). Defendant alleges that both causes of action are barred by collateral estoppel.¹ The state court statement of decision found denied Plaintiff's

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claims for intentional fraud and for rescission based on fraud. That decision granted Plaintiff's claims for unilateral mistake of fact and breach of fiduciary duty. While Plaintiff's complaint contained other causes of action, the state court deemed those causes of action to be forfeited by Plaintiff's failure to brief the issues.

"Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." *Allen v. McCurry*, 449 U.S. 90, 94 (1980). Collateral estoppel applies in dischargeability proceedings. *See Grogan v. Garner*, 498 U.S. 279, 284 n.11 (1991). And it is appropriate to consider a collateral estoppel argument at the motion to dismiss stage. *See, e.g., Conopco, Inc. v. Roll Int't*, 231 F.3d 82, 86 (2nd Cir. 2000).

In California, "collateral estoppel bars relitigation when (1) the issue decided in the prior action is identical to the issue presented in the second action; (2) there was a final judgment on the merits; and (3) the party against whom estoppel is asserted was a party . . . to the prior adjudication." *Garrett v. City & Cnty. of San Francisco*, 818 F.2d 1515, 1520 (9th Cir. 1987).

11 U.S.C. § 523(a)(4) states:

- (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt –
 - (4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny

Plaintiff's complaint raises three disjunctive claims: (1) defalcation in a fiduciary capacity, (2) embezzlement, and (3) larceny. "To prevail in a § 523(a)(4) action, the creditor must establish that (1) a fiduciary relationship existed and (2) a defalcation occurred." *Erde v. Moriarty*, 2013 WL 12132069 at *6 (C.D. Cal. 2013). Defalcation under § 523(a)(4) was recently defined broadly and, somewhat vaguely, by the

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CONT... **Jiangmin Li**
Supreme Court:

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Thus, where the conduct at issue does not involve bad faith, moral turpitude, or other immoral conduct, the term requires an intentional wrong. We include as intentional not only conduct that the fiduciary knows is improper but also reckless conduct of the kind set forth in the Model Penal Code. Where actual knowledge of wrongdoing is lacking, we consider conduct as equivalent if the fiduciary "consciously disregards" "a substantial and unjustifiable risk" that his conduct will turn out to violate a fiduciary duty. That risk "must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a *gross deviation* from the standard of conduct that a law-abiding person would observe in the actor's situation.

Bullock v. BankChampaign, N.A., 133 S. Ct. 1754, 1759-1760 (2013).

Embezzlement is the use of funds lawfully entrusted for an unauthorized purpose. *In re Littleton*, 942 F.2d 551, 555 (9th Cir. 1991). Larceny is the "felonious taking of another's personal property with intent to convert it or deprive the owner of the same." *In re Ormsby*, 591 F.3d 1199, 1205 (9th Cir. 2010). "Larceny is distinguished from embezzlement in that the original taking of the property was unlawful." *In re Montes*, 177 B.R. 325, 331 (Bankr C.D. Cal. 1994).

In ruling against Plaintiff's causes of action for fraud and rescission based on fraud, the state court found that, regarding the certain misrepresentations that were the basis of Plaintiff's claim, "Plaintiff did not rely on those misrepresentations in entering into the April agreement." In both cases, the state court found that Plaintiff failed to demonstrate that it relied on the alleged misrepresentations of Defendant in entering into the contract. This finding of the state court does not constitute a finding that Defendant did not commit defalcation. As the Supreme Court quotation above highlights, the issues are substantially different.

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The issues are also substantially different with regard to Plaintiff's § 523(a)(6) claim. 11 U.S.C. § 523(a)(6) states:

- (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt –
- (6) for willful and malicious injury by the debtor to another entity or to the property of another entity

Again, the state court's finding that Plaintiff failed to demonstrate reliance on alleged misrepresentations of Defendant when entering into the contract at issue does not constitute a finding that Defendant did not commit a willful and malicious injury. The state court's findings underlining its ruling in Plaintiff's favor for rescission based on unilateral mistake of fact and breach of fiduciary duty could plausibly be considered to state a claim pursuant to § 523(a)(4) and (6).

TENTATIVE RULING

The Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jiangmin Li

Represented By
Sam X J Wu

Defendant(s):

Jiangmin Li

Represented By
Sam X J Wu

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Movant(s):

Jiangmin Li

Represented By
Sam X J Wu

Plaintiff(s):

Dongxia Qiu

Represented By
John Y Kim

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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6:16-18917 Jiangmin Li

Chapter 7

Adv#: 6:17-01004 Qiu v. Li

#22.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01004. Complaint by Dongxia Qiu against Jiangmin Li. fraud as fiduciary, embezzlement, larceny)), (68 (Dischargeability - 523(a)(6), willful and malicious injury))

From: 3/8/17, 4/26/17

Also #21

EH__

Docket 1

***** VACATED *** REASON: ADVERSARY CASE DISMISSED 5/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jiangmin Li

Represented By
Sam X J Wu

Defendant(s):

Jiangmin Li

Represented By
Sam X J Wu

Plaintiff(s):

Dongxia Qiu

Represented By
John Y Kim

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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6:13-26277 Charles Frederick Biehl

Chapter 7

Adv#: 6:15-01265 Pringle v. Clements-Biehl

#23.00 CONT Pre-Trial Conference RE: [1] Adversary case 6:15-ap-01265. Complaint by John P. Pringle against Rene Clements-Biehl. (Charge To Estate). (14 (Recovery of money/property - other)),(13 (Recovery of money/property - 548 fraudulent transfer))

From: 2/1/17, 3/29/17, 5/31/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 9/13/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Frederick Biehl

Represented By
Daryl L Binkley - INACTIVE -
Steven L Bryson

Defendant(s):

Rene Clements-Biehl

Represented By
Allan D Sarver

Plaintiff(s):

John P. Pringle

Represented By
Elyza P Eshaghi
Brandon J Iskander

Trustee(s):

John P Pringle (TR)

Represented By
James C Bastian Jr
Elyza P Eshaghi

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CONT...

Charles Frederick Biehl

Brandon J Iskander

Chapter 7

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Adv#: 6:15-01304 Cisneros v. Kajan Mather & Barish, a professional corporation

#24.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01304. Complaint by A. Cisneros against Kajan Mather & Barish, a professional corporation, MATHER KUWADA, a limited liability partnership, MATHER LAW CORPORATION, a California corporation, LAW OFFICE OF KENNETH M. BARISH, Steven R. Mather, Kenneth M. Barish. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 1/13/16, 3/30/16, 4/6/16, 5/4/16, 5/25/16, 9/28/16, 11/2/16, 11/9/16, 12/14/16, 1/11/17, 5/17/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/28/17 AT 11:00 AM**

Tentative Ruling:

12/14/2016

The instant Status Conference is CONTINUED to January 11, 2017, at 2:00 p.m., to be heard in conjunction with Defendants' Motion for Summary Judgment

APPEARANCES WAIVED.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

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CONT... Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Defendant(s):

Steven R. Mather	Pro Se
Kenneth M. Barish	Pro Se
MATHER LAW CORPORATION,	Represented By Michael S Kogan
Kajan Mather & Barish, a	Represented By Michael S Kogan
MATHER KUWADA, a limited	Represented By Michael S Kogan

Plaintiff(s):

A. Cisneros	Represented By D Edward Hays Chad V Haes Franklin R Fraley Jr Sue-Ann L Tran Jasmine W Wetherell
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Trustee(s):

Arturo Cisneros (TR)	Represented By Chad V Haes D Edward Hays Franklin R Fraley Jr
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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01163 Revere Financial Corporation v. Burns

#25.00 Motion to set aside RE: Default

Also #26

EH__

Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Don Cameron Burns

Pro Se

Movant(s):

Don Cameron Burns

Pro Se

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01163 Revere Financial Corporation v. Burns

#26.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01163. Complaint by Revere Financial Corporation against Don C. Burns. (12 (Recovery of money/property - 547 preference)),(11 (Recovery of money/property - 542 turnover of property)),(14 (Recovery of money/property - other)),(91 (Declaratory judgment))

From: 8/31/16, 11/2/16, 1/11/17, 3/8/17

Also #25

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Don Cameron Burns

Pro Se

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay

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CONT...

Douglas Jay Roger

Franklin R Fraley Jr

Chapter 7

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6:16-20927 Mee Soon Kim

Chapter 7

Adv#: 6:17-01064 Jabro v. Kim et al

#27.00 CONT Status Conference Re: Complaint by Hikmat Jabro against Mee Soon Kim, Tae Young Kim . (14 (Recovery of money/property - other))

From: 5/17/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mee Soon Kim

Represented By
Minh Duy Nguyen

Defendant(s):

Tae Young Kim

Pro Se

Mee Soon Kim

Pro Se

Plaintiff(s):

Hikmat Jabro

Represented By
Michael H Jabro

Trustee(s):

Larry D Simons (TR)

Represented By
David Seror
Michael W Davis

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2:00 PM

6:17-10032 Richard Earl Davis, Jr

Chapter 7

Adv#: 6:17-01066 Gumbs et al v. Davis, Jr et al

#28.00 Status Conference RE: [1] Adversary case 6:17-ap-01066. Complaint by Angelo M Gumbs , Kandis Gumbs against Richard Earl Davis Jr, Two6 Sports Management . false pretenses, false representation, actual fraud))

EH _____

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Earl Davis Jr

Represented By
Todd L Turoci

Defendant(s):

Two6 Sports Management

Pro Se

Richard Earl Davis Jr

Pro Se

Plaintiff(s):

Kandis Gumbs

Represented By
Alexander B Boris

Angelo M Gumbs

Represented By
Alexander B Boris

Trustee(s):

Steven M Speier (TR)

Pro Se

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2:00 PM

6:17-11105 Joey James Valdez

Chapter 7

Adv#: 6:17-01065 Valdez v. Ford Motor Credit Co LLC

#29.00 Status Conference RE: [1] Adversary case 6:17-ap-01065. Complaint by Joey James Valdez against Ford Motor Credit Co LLC . (Fee Not Required). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) ,(12 (Recovery of money/property - 547 preference)

EH _____

Docket 1

***** VACATED *** REASON: ADVERSARY DISMISSED 5/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joey James Valdez Pro Se

Defendant(s):

Ford Motor Credit Co LLC Represented By
Harlan M. Reese

Plaintiff(s):

Joey James Valdez Pro Se

Trustee(s):

Larry D Simons (TR) Pro Se

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6:17-11311 AHMAD JAMALEDDIN ALJINDI

Chapter 7

Adv#: 6:17-01051 ALJINDI v. US DEPARTMENT OF EDUCATION ET AL

#30.00 Status Conference RE Amended Complaint by AHMAD JAMALEDDIN ALJINDI against US DEPARTMENT OF EDUCATION ET AL . (RE: related document(s)1 Adversary case 6:17-ap-01051. . Nature of Suit: (63 (Dischargeability - 523(a) (8), student loan)) filed by Plaintiff AHMAD JAMALEDDIN ALJINDI

EH__

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

AHMAD JAMALEDDIN ALJINDI Pro Se

Defendant(s):

US DEPARTMENT OF Represented By
Elan S Levey

Plaintiff(s):

AHMAD JAMALEDDIN ALJINDI Pro Se

Trustee(s):

Lynda T. Bui (TR) Pro Se

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6:14-16813 M. A. Tabor

Chapter 7

Adv#: 6:16-01128 Frealy v. Trotochau et al

#31.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01128. Complaint by Todd A. Frealy against Robin Sherrie Trotochau, Pacific Mortgage Exchange, Inc.. (Charge To Estate). - Complaint: (1) For Breach Of Contract; (2) For Common Counts; (3) To Avoid And Recover Fraudulent Transfers; And (4) To Preserve Recovered Transfers For Benefit Of Debtor's Estate (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

From: 7/20/16, 9/28/16, 1/11/17, 3/8/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

M. A. Tabor

Represented By
Judith Runyon

Defendant(s):

Pacific Mortgage Exchange, Inc.

Represented By
Salvatore Bommarito

Robin Sherrie Trotochau

Pro Se

Plaintiff(s):

Todd A. Frealy

Represented By
Anthony A Friedman

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CONT... M. A. Tabor

Chapter 7

Trustee(s):

Todd A. Frealy (TR)

Represented By
Anthony A Friedman
Lindsey L Smith

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6:14-16872 William Redfield Barlow, III

Chapter 7

Adv#: 6:17-01021 Whitmore v. E*Trade Securities, LLC et al

#32.00 CONT Status Conference Re: Complaint by Robert Whitmore against E*Trade Securities, LLC. (Charge To Estate - \$350.00). Complaint for Turnover of Property of the Bankruptcy Estate (Attachments: # 1 Adversary Proceeding Cover Sheet # 2 Summons and Notice of Status Conference) Nature of Suit: 11-Recovery of money/property - 542 turnover of property

From: 4/5/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Redfield Barlow III

Represented By
Michael E Clark
Heather J Canning

Defendant(s):

E*Trade Financial Corporation

Pro Se

E*Trade Securities, LLC

Pro Se

Joint Debtor(s):

Lindsay Marie Barlow

Represented By
Michael E Clark
Heather J Canning

Plaintiff(s):

Robert Whitmore

Represented By
Julie Philippi

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CONT... William Redfield Barlow, III

Chapter 7

Trustee(s):

Robert Whitmore (TR)

Represented By
Julie Philippi
Todd L Turoci

**United States Bankruptcy Court
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Wednesday, June 07, 2017

Hearing Room 303

2:00 PM

6:16-17802 Armon Randolph Sharp

Chapter 7

Adv#: 6:17-01053 Cisneros v. Simpson

#33.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01053. Complaint by Arturo Cisneros against William J. Simpson. (Charge To Estate). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property))

From: 5/3/17

EH__

Docket 1

***** VACATED *** REASON: ADVERSARY CASE DISMISSED 6/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Armon Randolph Sharp

Represented By
Daniel King
Raymond W Stockstill

Defendant(s):

William J. Simpson

Pro Se

Plaintiff(s):

Arturo Cisneros

Represented By
Toan B Chung

Trustee(s):

Arturo Cisneros (TR)

Represented By
Toan B Chung

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6:16-16834 Kristi Lea Trimble

Chapter 7

Adv#: 6:16-01252 Trimble v. UNITED STATES OF AMERICA, IRS

#34.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01252. Complaint by Kristi Lea Trimble against UNITED STATES OF AMERICA, IRS. (Charge To Estate). Nature of Suit: (66 (Dischargeability - 523(a)(1),(14),(14A) priority tax claims))

From: 12/14/16, 2/15/17

EH__

Docket 1

*** VACATED *** REASON: JUDGMENT ENTERED 5/4/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kristi Lea Trimble

Represented By
Bruce A Boice

Defendant(s):

UNITED STATES OF AMERICA,

Pro Se

Plaintiff(s):

Kristi Lea Trimble

Represented By
Bruce A Boice

Trustee(s):

Steven M Speier (TR)

Pro Se

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2:00 PM

6:16-16191 Sheri Tanaka Christopher

Chapter 7

Adv#: 6:17-01028 Frealy, Chapter 7 Trustee v. Tanaka et al

#35.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01028. Complaint by Todd A Frealy, Chapter 7 Trustee against Ronald Howard Tanaka, Carolyn Naomi Tanaka, Ryan Satoshi Tanaka, Leora Linda Tanaka, Estate of Yaeko Sato, a California Probate Estate. (Charge To Estate). Complaint for: (1) Sale of Real Property Pursuant to 11 U.S.C. § 363(h); and (2) Turnover of Property of the Estate Pursuant to 11 U.S.C. § 542 (Attachments: # 1 Adversary Proceeding Cover Sheet) 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))

From: 4/5/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sheri Tanaka Christopher

Represented By
Brian J Soo-Hoo

Defendant(s):

Leora Linda Tanaka

Represented By
David L Prince

Estate of Yaeko Sato, a California

Represented By
David L Prince

Ryan Satoshi Tanaka

Represented By
David L Prince

Ronald Howard Tanaka

Represented By
David L Prince

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CONT... **Sheri Tanaka Christopher**
Carolyn Naomi Tanaka

Represented By
David L Prince

Chapter 7

Plaintiff(s):

Todd A Frealy, Chapter 7 Trustee

Represented By
Montserrat Morales

Trustee(s):

Todd A. Frealy (TR)

Represented By
Montserrat Morales

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6:16-11635 Sam Daniel Dason

Chapter 7

Adv#: 6:16-01211 Olivares v. Dason

#36.00 CONT Status Conference Re: Amended Complaint by Juddy Olivares, Eric A Panitz against Sam Daniel Dason; 68- Dischargeability - 523(a)(6) Willful and Malicious Injury

From: 11/2/16, 1/4/17, 3/1/17, 3/8/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sam Daniel Dason

Represented By
Robert G Uriarte

Defendant(s):

Sam Daniel Dason

Represented By
Robert G Uriarte

Joint Debtor(s):

Greeta Sam Dason

Represented By
Robert G Uriarte

Plaintiff(s):

Juddy Olivares

Represented By
Lazaro E Fernandez

Trustee(s):

Lynda T. Bui (TR)

Represented By
Brett Ramsaur

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2:00 PM

6:16-12900 Richard G Rothman

Chapter 7

Adv#: 6:16-01170 California Solar Thermal, Inc. v. Rothman

#37.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01170. Complaint by California Solar Thermal, Inc. against Richard G Rothman. Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)

From: 9/7/16, 1/11/17, 5/17/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard G Rothman

Represented By
Daniel J Winfree

Defendant(s):

Richard G Rothman

Represented By
Daniel J Winfree

Joint Debtor(s):

Shari A Randall

Represented By
Daniel J Winfree

Plaintiff(s):

California Solar Thermal, Inc.

Represented By
Douglas A Plazak

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CONT... Richard G Rothman

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Pro Se

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2:00 PM

6:16-13096 Tarek El Sayed Ayoub

Chapter 7

Adv#: 6:16-01219 Candee et al v. Ayoub et al

#38.00 CONT Status Conference Re: Complaint by Keith H Candee, Original Thurber Ranch LLC against Tarek El Sayed Ayoub, Gabriela Villeda Ayoub

From: 11/1/16

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tarek El Sayed Ayoub

Represented By
Sherif Fathy

Defendant(s):

Gabriela Villeda Ayoub

Represented By
Sherif Fathy

Tarek El Sayed Ayoub

Represented By
Sherif Fathy

Joint Debtor(s):

Gabriela Villeda Ayoub

Represented By
Sherif Fathy

Plaintiff(s):

Original Thurber Ranch LLC

Represented By
Jon H Lieberg

Keith H Candee

Represented By
Jon H Lieberg

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CONT... Tarek El Sayed Ayoub

Chapter 7

Trustee(s):

Wesley H Avery (TR)

Represented By
Larry D Simons

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6:16-13311 Jose Antonio Hernandez
Adv#: 6:16-01176 Simons v. Navarro

Chapter 7

#39.00 CONT Status Conference RE: Complaint to Avoid and Recover Fraudulent Transfer

From: 9/7/16, 11/9/16, 1/11/17, 3/8/17, 4/12/17, 5/17/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Antonio Hernandez

Represented By
Jessica De Anda Leon

Defendant(s):

Carolina Villalobos Navarro

Represented By
Christopher J Langley

Plaintiff(s):

Larry D Simons

Represented By
Frank X Ruggier

Trustee(s):

Larry D Simons (TR)

Represented By
Frank X Ruggier

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6:16-19799 Jaison Vally Surace

Chapter 7

Adv#: 6:16-01295 Abbasi v. Surace et al

#40.00 CONT Status Conference Re: Complaint by Setareh Abbasi, Bruce Dannemeyer, Jaison Vally Surace against Jaison Vally Surace, Walie Qadir, Marym Qadir. false pretenses, false representation, actual fraud, 67 - Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 13 - Recovery of money/property - 548 fraudulent transfer, 91 - Declaratory judgment, 02 - Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

From: 2/15/17, 5/17/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Defendant(s):

Marym Qadir

Represented By
Batkhand Zoljargal

Walie Qadir

Represented By
Batkhand Zoljargal

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Plaintiff(s):

Setareh Abbasi

Represented By
Bruce Dannemeyer

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CONT... Jaison Vally Surace

Bruce Dannemeyer

Chapter 7

Trustee(s):

John P Pringle (TR)

Represented By
Todd A Frealy
Carmela Pagay

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6:14-17350 Dean L. Springer, Sr.

Chapter 7

Adv#: 6:16-01143 Simons v. Caffery Financial, inc. et al

#41.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01143. Complaint by Larry D Simons against Caffery Financial, inc., Joe G. Caffery, Kim Caffery, Caffery Family Trust (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))

From: 9/7/16, 12/7/16, 1/11/17, 2/15/17, 4/26/17

EH __

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr. Pro Se

Defendant(s):

Caffery Family Trust Pro Se

Caffery Financial, inc. Pro Se

Joe G. Caffery Pro Se

Kim Caffery Pro Se

Joint Debtor(s):

Tami Jo Springer Pro Se

Plaintiff(s):

Larry D Simons
Represented By
Sarah Cate Hays
D Edward Hays

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CONT... Dean L. Springer, Sr.

Chapter 7

Trustee(s):

Larry D Simons (TR)

Represented By
Richard A Marshack
Sarah Cate Hays
D Edward Hays

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2:00 PM

6:14-17350 Dean L. Springer, Sr.
Adv#: 6:16-01140 Simons v. Lindgren

Chapter 7

#42.00 CONT Motion for Entry of Default Judgment

From: 4/12/17, 5/17/17

Also #43

EH__

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr. Pro Se

Defendant(s):

Charles Lindgren Pro Se

Joint Debtor(s):

Tami Jo Springer Pro Se

Movant(s):

Larry D Simons Represented By
Sarah Cate Hays
D Edward Hays

Plaintiff(s):

Larry D Simons Represented By
Sarah Cate Hays
D Edward Hays

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CONT... Dean L. Springer, Sr.

Chapter 7

Trustee(s):

Larry D Simons (TR)

Represented By
Richard A Marshack
Sarah Cate Hays
D Edward Hays

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2:00 PM

6:14-17350 Dean L. Springer, Sr.

Chapter 7

Adv#: 6:16-01140 Simons v. Lindgren

#43.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01140. Complaint by Larry D Simons against Charles Lindgren (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))

From: 9/7/16, 12/7/16, 3/1/17, 4/12/17, 5/17/17

Also #42

EH __

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr. Pro Se

Defendant(s):

Charles Lindgren Pro Se

Joint Debtor(s):

Tami Jo Springer Pro Se

Plaintiff(s):

Larry D Simons Represented By
Sarah Cate Hays
D Edward Hays

Trustee(s):

Larry D Simons (TR) Represented By

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CONT...

Dean L. Springer, Sr.

Richard A Marshack
Sarah Cate Hays
D Edward Hays

Chapter 7

**United States Bankruptcy Court
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Hearing Room 303

2:00 PM

6:16-18609 Carlos Garrido

Chapter 7

Adv#: 6:16-01309 Kercado v. Garrido

#44.00 Motion for Default Judgment

Also #45

EH__

Docket 7

Tentative Ruling:

6/7/17

BACKGROUND

On September 26, 2016, Carlos & Maribelle Garrido ("Debtors") filed a Chapter 7 voluntary petition. On December 30, 2016, Maria Kercado ("Plaintiff") filed a non-dischargeability complaint against Carlos Garrido ("Defendant").

The clerk entered default against Defendant on February 10, 2017. Plaintiff filed a motion for default judgment on April 15, 2017.

FACTUAL BACKGROUND

On May 13, 2013, Plaintiff and Defendant entered into a contract for a \$50,000 loan. Defendant was to make \$1,000 monthly payments to Plaintiff and Plaintiff was to take a security interest in a 1990 Arriva Boat. Defendant overestimated the value of the boat to Plaintiff, and Plaintiff states that the boat was in complete disrepair. In December 2013, Defendant stated that, every fourth month he would make a payment of \$2,000 instead of the contractual \$1,000. On February 2014, Defendant ceased

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CONT... **Carlos Garrido**
making payments.

Chapter 7

On April 9, 2014, Plaintiff filed a state court lawsuit against Defendant for breach of contract, negligent misrepresentation, and conversion. On October 27, 2015, Plaintiff obtained a judgment against Defendant in the amount of \$37,000.

DISCUSSION

A. Entry of Default

Fed. R. Civ. P. Rule 55 states that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." Fed. R. Civ. P. 55(a). Local Rule 7055-1 provides further requirements regarding a motion for entry of default judgment, and those requirements have been substantially satisfied here.

B. Default Judgment

Factors which may be considered by courts in exercising discretion as to the entry of a default judgment include: (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute considering material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the FRCP favoring decision on the merits. *See NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 616 (9th Cir. 2016) (*quoting Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986)).

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CONT...

Carlos Garrido

Chapter 7

1. Proper Service of Summons and Complaint

Fed. R. Bankr. P. Rule 7004(b)(1) states, in part:

[S]ervice may be made within the United States by first class mail postage prepaid as follows:

- (1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

Here, Plaintiff served Debtors and their counsel at the addresses of record.

2. Merits of Plaintiff's claim

Upon default, the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true. *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987); *see also Almog v. Golden Summit Investors Group, Ltd.*, 2012 WL 12867972 at *4 (C.D. Cal. 2012) ("When reviewing a motion for default judgment, the Court must accept the well-pleaded allegations of the complaint relating to liability as true.").

Here, the complaint includes three causes of action: § 523(a)(6) and § 523(a)(2)(A) twice.

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CONT... Carlos Garrido

Chapter 7

Regarding § 523(a)(2)(A), the elements are: (1) the debtor made the representations; (2) that at the time he knew they were false; (3) that he made them with the intention and purpose of deceiving the creditor; (4) that the creditor relied on such representation; and (5) that the creditor sustained the alleged loss and damage as the proximate result of the representations having been made. *See, e.g., In re Britton*, 950 F.2d 602, 604 (9th Cir. 1991). Plaintiff has adequately plead facts to satisfy the elements of § 523(a)(2)(A).

Regarding § 523(a)(6) the elements are: "(1) willful conduct, (2) malice, and (3) causation." *See, e.g., In re Apte*, 180 B.R. 223, 230 (B.A.P. 9th Cir. 1995). Plaintiff has adequately plead facts to satisfy the elements of § 523(a)(6)

3. Amount of Damages

Local Rule 7055-1(b)(1)(2) requires a declaration establishing the amount of damages when the amount claimed is unliquidated. Here, the amount claimed is liquidated. Therefore, the amount of damages has been adequately established.

TENTATIVE RULING

Based on the foregoing, the Court will GRANT the motion, and adjudicate that the debt represented by the state court judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(6).

APPEARANCES WAIVED. Movant to lodge an order and proposed judgment within

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CONT... **Carlos Garrido**

Chapter 7

seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Carlos Garrido

Represented By
Inez Tinoco-Vaca

Defendant(s):

Carlos Garrido

Pro Se

Joint Debtor(s):

Maribelle Garrido

Represented By
Inez Tinoco-Vaca

Movant(s):

Maria Kercado

Represented By
Sergio A Rodriguez

Plaintiff(s):

Maria Kercado

Represented By
Sergio A Rodriguez

Trustee(s):

Lynda T. Bui (TR)

Pro Se

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6:16-18609 Carlos Garrido

Chapter 7

Adv#: 6:16-01309 Kercado v. Garrido

#45.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01309. Complaint by Inmaculada Kercado, Maria Inmaculada Kercado against Carlos Garrido. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury))

From: 3/1/17, 5/3/17

Also #44

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carlos Garrido

Represented By
Inez Tinoco-Vaca

Defendant(s):

Carlos Garrido

Pro Se

Joint Debtor(s):

Maribelle Garrido

Represented By
Inez Tinoco-Vaca

Plaintiff(s):

Maria Kercado

Represented By
Sergio A Rodriguez

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CONT... Carlos Garrido

Chapter 7

Trustee(s):

Lynda T. Bui (TR)

Pro Se

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6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#46.00 Motion For Summary Judgment/Memorandum of Points and Authorities on the Preclusive Effect of Plaintiff's State Court Judgment

Also #47

EH__

Docket 208

***** VACATED *** REASON: CONTINUED TO 7/12/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Denise M Tessier
Deepalie M Joshi

Movant(s):

Charles Edward Schrader

Pro Se

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

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2:00 PM

6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#47.00 CONT Status Conference RE: Adversary case 6:13-ap-01171. Complaint by Charles Edward Schrader against Narinder Sangha . willful and malicious injury
HOLDING DATE

From: 7/8/15, 11/4/15, 3/2/16, 12/14/16, 12/13/17, 4/5/17

Also #46

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 7/12/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Denise M Tessier
Deepalie M Joshi

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:16-15419 Francisco Javier Castillo

Chapter 7

Adv#: 6:16-01310 Swift Financial Corporation d.b.a. Swift Capital v. Castillo

#48.00 CONT OSC why defendant's answer should not be stricken and default entered and defendant sanctioned for failure by defendant to appear at the initial status conference and participate in the preparation of the initial status report

From: 5/31/17

EH__

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco Javier Castillo

Represented By
Joseph M Tosti

Defendant(s):

Francisco Javier Castillo

Pro Se

Plaintiff(s):

Swift Financial Corporation d.b.a.

Represented By
Lazaro E Fernandez

Trustee(s):

Robert Whitmore (TR)

Pro Se

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2:00 PM

6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:14-01081 Albrecht v. Slaieh

#49.00 CONT Status Conference RE: [1] Adversary case 6:14-ap-01081. Complaint by W.E. Jon Albrecht against Nabeel Slaieh. willful and malicious injury))
HOLDING DATE

From: 10/19/16, 12/14/16, 2/15/17, 3/29/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

Nabeel Slaieh

Represented By
Stephen B Mashney
Bruce A Boice
George A Saba

Plaintiff(s):

W E Jon Albrecht

Represented By
William L Miltner
Robert C Harvey

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood

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Matthew Grimshaw

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6:13-30133 Nabeel Slaieh

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Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#50.00 CONT Motion to Dismiss the Amended Counter-Claims Pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure

From: 4/26/17, 5/17/17

Also #51 & #52

EH__

Docket 44

Tentative Ruling:

6/7/17

I. PROCEDURAL BACKGROUND

On April 31, 2016, Trustee filed a complaint against Nabeel Naiem Slaieh and Joanne Fraleigh (collectively, "Defendants") (individually, "Slaieh" and "Fraleigh") for avoidance and recovery of unauthorized post-petition transfer. After early disagreements regarding the sufficiency of service, the parties stipulated that Fraleigh was properly served and the Court ordered Defendants' response due December 16, 2016.

On December 16, 2016, Defendants filed an answer and "cross-claims"¹ (hereinafter,

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"counter-claims", and "counter-complaint") against Trustee and his professionals ("Counter-Defendants") for: (1) breach of contract; (2) fraud & deceit; (3) extortion; (4) conversion; (5) defamation and slander; (6) negligence; (7) breach of fiduciary duties; (8) violation of Cal. Bus. & Prof. Code § 17200; (9) intentional infliction of emotional distress; and (10) wrongful eviction. On January 17, 2017, Counter-Defendants filed a motion to dismiss the counter-claims pursuant to Fed. R. Civ. P. Rule 12(b)(6). On January 18, 2017, Fraleigh filed a voluntary dismissal of her counter-complaint. On January 29, 2017, Slaieh filed his opposition to Counter-Defendants' motion to dismiss. On February 8, 2017, Counter-Defendants filed their reply and evidentiary objections. On March 6, 2017, the Court entered an order dismissing the counter-complaint with prejudice, with the exception of the fifth cause of action (defamation and slander).

On March 3, 2017, Slaieh filed a renewed counter claim ("Amended Counterclaim") against Trustee and his professionals for: (1) slander; (2) defamation; and (3) intentional infliction of emotion distress. On March 24, 2017, Trustee filed a motion to dismiss for failure to state a claim. On May 4, 2017, Slaieh filed his opposition to the motion, and on May 30, 2017, Trustee filed a reply.

II. FACTUAL BACKGROUND

The fact patter that forms the basis of Slaieh's motion involves the enforcement of this Court's sale order regarding certain real property located in Temecula (the "Real Property"). That order, entered May 26, 2016, stated, in part:

13. Pursuant to 11 U.S.C. §§ 542(a) and 704(a)(1), Debtor, his non-debtor spouse, and all occupants of the Property are ordered to vacate the Property no later than June 7, 2016, at 9:00 a.m., and they shall surrender possession of the Property to Trustee's designated custodian at that time, and in turn, Trustee shall immediately deliver possession to Buyer;

14. If Debtor, his non-debtor spouse, or any other occupants of the Property fails to vacate the Property by 9:00 a.m. on June 7, 2016, then the Trustee may direct the United States Marshals Service to: (a) forcibly evict and lockout all

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occupants of the Property; and (b) surrender possession of the Property to the Trustee's designated custodian;

15. The Attorneys for the Chapter 7 Trustee may prepare a Write of Assistance consistent with this Order for the Clerk of the Court to issue;

16. If Debtor, his non-debtor spouse, or any other occupant of the Property fail to vacate the Property by 9:00 a.m. on June 7, 2016, then the Trustee is authorized to expend \$1,500.00 to (a) rent a U-Haul (or similar) moving truck ("Moving Vehicle") and (b) hire an agent (without the need of filing an employment or fee application) to facilitate the removal of any personal property items left at the Property ("Personal Items");

17. On the same day that the Personal Items are removed from the Property, the Trustee may arrange with Debtor's counsel, for a three (3) hour time period whereby Debtor's non-debtor spouse may meet the Trustee's agent and remove whatever Personal Items they desire from the Moving Vehicle ("Removal Period");

18. Regardless of the reason as to why the Personal Items were not removed, at the end of the Removal Period, the Trustee may discard all Personal Items remaining in the Moving Vehicle at any time without further order of this Court;

19. When the procedure for removing Personal Items is completed, the Trustee, his agents, and Buyer will have been deemed to have satisfied any obligations they may have under California law (or other applicable law) relating to the removal and/or abandonment of Debtor's personal items;

Slaieh unsuccessfully appealed the sale order to United States District Court, Central District of California. On July 13, 2016, the United States Marshal Service posted a notice to vacate the Real Property, instructing the occupants to vacate by July 20, 2016. The day before eviction was to occur, Fralieggh filed a quiet title complaint in state court. Fralieggh also filed an *ex parte* application for a temporary restraining order. The basis for Fralieggh's complaint and application was that Slaiegh transferred the Real Property to Fralieggh on or around May 7, 2016. On July 20, 2016, the state court entered a stay of eviction until July 28, 2016. On July 21, 2016, Trustee filed an emergency motion with this Court, requesting that the state court stay be dissolved and that the Court find the state court was without jurisdiction to enter the stay. That

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motion was granted the same day.

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Later in July 2016, the United States Marshal Service evicted Slaieh. At the time of the eviction certain windows and doors were missing from the Real Property. Slaieh's Amended Counterclaim states that Trustee's attorney accused Slaieh of stealing the windows and doors from the home, and that certain individuals, namely Fraleigh and some "employees," were there at the time the statement was made.

III. DISCUSSION

Fed. R. Civ. P. Rule 12(b)(6), incorporated by Fed. R. Bankr. P. Rule 7012(b), states:

(b) Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(6) failure to state a claim upon which relief can be granted.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)), stated the following:

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." 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 is not akin to a "probability requirement," but it asks for more than a sheer possibility, that a defendant has acted unlawfully. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line

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between possibility and plausibility of "entitlement to relief."

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A. Evidentiary Objections

Slaieh has raised numerous evidentiary objections that will be disposed of summarily by the Court. All of Slaieh's "evidentiary objections" are overruled by the Court on the basis that they are vague. Specifically, the Court cannot ascertain what Slaieh is objecting to, since Slaieh appears to have invented an exhibit numbering system that does not resemble the actual numbering of the exhibits. Furthermore, all Slaieh's evidentiary objections merely state that he objects on relevancy grounds without any discussion or description of why the matter is irrelevant.

B. Slaieh's Causes of Actions

Counts 1 & 2: Slander & Defamation

Slaieh's first cause of action is slander. Slander is defined in California as:

a false and unprivileged publication, orally uttered, and also communications by radio or any mechanical or other means which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;
2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;
3. Tends directly to injure him in respect to his office, profession, trade or

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business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits;

4. Imputes to him impotence or a want of chastity; or
5. Which, by natural consequence, causes actual damage.

Cal. Civ. Code § 46 (1945). "To prevail in a defamation claim under California law, a plaintiff must allege '(a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage.'" *Bowen v. M. Caratan, Inc.*, 142 F. Supp. 3d 1007, 1033 (E.D. Cal. 2015) (quoting *Taus v. Loftus*, 40 Cal. 4th 683, 720 (Cal. 2007)). "Publication means communication to a third person who understands the defamatory meaning of the statement and its application to the person to whom reference is made." *Arikat v. JP Morgan Chase*, 430 F. Supp. 2d 1013, 1020 (N.D. Cal. 2006).

Here, Slaieh's first cause of action has sufficiently alleged the elements of slander/defamation to survive a motion to dismiss for failure to state a claim. Specifically, Slaieh has described the alleged publication (the statement alleging theft), has alleged that the statement was false, the statement is presumptively defamatory, the statement is not clearly privilege, and the statement described has a natural tendency to injury. Slaieh's second cause of action appears to allege that Counter-Defendants have slandered Fraleigh. Fraleigh, however, is not a party to the Amended Counter-complaint and Slaieh cannot assert her rights in the counter-complaint. Therefore, Slaieh lacks standing to bring the second cause of action.

Counts 3: Intentional Infliction of Emotional Distress:

Slaieh's third of action is intentional infliction of emotional distress. This cause of action was dismissed with prejudice on March 6, 2017. Slaieh states in his opposition that:

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In addition to amending the causes of action for defamation and slander per se causes of action, Debtor kept the Intentional Inflictions of Emotional Distress since there was a confusion as to whether this cause of action was dismissed when the court initially held to grant the motion to dismiss *in its entirety* or whether that cause of action was dismissed because some other causes of action, but not the defamation and slander per se causes of action were dismissed.

The intentional infliction of emotional distress cause of action was dismissed with prejudice, and the order entered on March 6, 2017, is unambiguous in that respect. Slaieh also states: "The court's order as to the IIED claim is silent as to which claim that was sustained this IIED claim referred to, Debtor is entitled under California Law to seek IIED on each of the slander and defamation claims." This statement is confusing to the point of being incomprehensible, although it appears he may believe that intentional infliction of emotional distress is a component of damages, instead of a cause of action. Regardless, as noted above, Slaieh's third cause of action was previously dismissed with prejudice.

C. Trustee's Qualified Immunity

"Bankruptcy trustees are entitled to broad immunity from suit when acting within the scope of their authority and pursuant to court order." *In re Harris*, 590 F.3d 730, 742 (9th Cir. 2009) (quoting *Bennett v. Williams*, 892 F.2d 822, 823 (9th Cir. 1989)). "Additionally, 'court appointed officers who represent the estate are the functional equivalent of a trustee.'" *Id.* (quoting *In re Crown Vantage, Inc.*, 4 F.3d 963, 973 (9th Cir. 2005)).

"For derived quasi-judicial immunity to apply, the defendants must satisfy the following four elements: (1) their acts were within the scope of their authority; (2) the debtor had notice of their proposed acts; (3) they candidly disclosed their proposed acts to the bankruptcy court; and (4) the bankruptcy court approved their acts." *Id.*

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Furthermore, to support a claim against the Trustee, the Trustee's alleged actions must typically be willful and deliberate – negligence will not suffice. *See, e.g., In re Hunter*, 553 B.R. 866, 873 (Bankr. D.N.M. 2016) (*quoting Sherr v. Winkler*, 552 F.2d 1367, 1375 (10th Cir. 1977)).

Regarding Counter-Defendants' actions related to the sale of the Real Property, and the eviction of Slaieh, Trustee is entitled to quasi-immunity. The sale of the Real Property and the eviction are within the scope of a trustee's duties, were disclosed to the Court, and were subsequently approved by the Court. And Slaieh clearly had notice of the proposed acts, given that he vigorously contested their execution. Furthermore, a necessary component of Counter-Defendants' duty in executing the eviction in preparation of the sale is to investigate the sudden disappearance of necessary fixtures from the Real Property. *See, e.g., In re Cedar Funding, Inc.*, 419 B.R. 807, 822 (B.A.P. 9th Cir. 2009) (immunity for "trustee's communications [that] occurred while he was performing his official statutory duties"). While, clearly, the specific alleged statements at issue here were not authorized by the Court, "quasi-judicial immunity attaches to [] those functions essential to the authoritative adjudication of private rights to the bankruptcy estate." *In re Castillo*, 297 F.3d 940, 951 (9th Cir. 2002). Here, the allegedly defamatory statements were made in direct response to the disappearance of estate property, the sale of which had been authorized pursuant to Court order, and the disappearance of which was the sole responsibility of the Trustee to investigate.

Policy also has a role in this analysis. Taking judicial notice of the record of this bankruptcy case, prior to the eviction there was, among other things, evidence of concern that Slaieh may destroy or damage the Real Property. [*See, e.g., May 4th hearing transcript in case 13-bk-30133-MH and related declarations, including Dkt. 322, ex. 1*]. The application of the doctrine of quasi-judicial immunity to bankruptcy trustees and their professionals is based on a policy of protecting the bankruptcy process. Given the circumstances evidenced by the record of this case, including the extensive lengths to which Slaieh went to prevent the Trustee from selling the Real Property and actions to frustrate the Trustee's efforts, and the stated concern by Trustee's broker of possible damage to the Real Property by Slaieh approximately two months prior to the eviction date, the Court concludes that the alleged defamatory statements are protected as within the reasonable exercise of Trustee's efforts to investigate and recover missing estate property, and, therefore are covered by Counter-Defendants' quasi-judicial immunity.

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Therefore, the Court holds that Counter-Defendants are entitled to quasi-judicial immunity with regard to the alleged slanderous statements, and that, therefore, Counter-Defendants are entitled to have the Amended Counterclaim dismissed.

D. Failure to Name Parties

As asserted by Counter-Defendants, the Amended Counterclaim does not allege any action by Counter Defendants Larry D. Simons and David A. Wood, nor has Plaintiff alleged with any specificity how liability attaches to those Counter Defendants. On that basis, the Amended Counterclaim shall be dismissed as to those Counter Defendants.

E. Leave to Amend

Trustee has requested that the complaint be dismissed without leave to amend. Fed. R. Civ. P. Rule 15(a)(2), incorporated by Fed. R. Bankr. P. Rule 7015, provides that: "In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." The Supreme Court has previously provided a non-exhaustive list of reasons why leave to amend should be denied. *Forman v. Davis*, 371 U.S. 178, 182 (1962) ("undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc."); see also *United Union of Roofers, Waterproofers, & Allied Trades No. 40 v. Ins. Corp. of Am.*, 919 F.2d 1398, 1402 (9th Cir. 1990) (denial when amendment would be "clearly frivolous, unduly prejudicial, cause undue delay or a finding of bad faith is made").

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The Court notes, however, that claims arising from the factual situation described by Slaieh are subject to quasi-judicial immunity, as noted in Section III.C, *supra*. See, e.g., *In re Keenan*, 339 Fed. Appx. 809, 810 (9th Cir. 2009) ("Dismissal with prejudice was proper because quasi-judicial immunity precludes the Keenans' claims."). All of the actions alleged by Slaieh arise from duties that are within the scope of Trustee's authority, were disclosed to, and approved by the Court, and of which Slaieh received proper notice. Finally, this is the third time that Slaieh has presented these claims against Counter-Defendants, and the third time Slaieh has failed to put forth a *prima facie* case. (See order denying Slaeih's *Barton* motion filed as Docket No. 453 in 13-bk-3011-MH and Docket No. 37 in 16-ap-1224-MH). For all of these reasons, the Court determines that it is appropriate to dismiss the counter-complaint with prejudice.

TENTATIVE RULING

For the reasons stated above, and otherwise as set forth in Trustee's motion to dismiss and his reply, the Court's tentative ruling is to GRANT the motion and DISMISS the counter-complaint with prejudice.

APPEARANCES REQUIRED.

04/26/2017

The Court, having reviewed the Trustee's Unilateral Status Report indicating that he has agreed to a continuance of the hearing, the Trustee may appear telephonically.

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

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Defendant(s):

David A. Wood	Pro Se
Joanne Fraleigh	Represented By George A Saba
Nabeel Naiem Slaieh	Represented By George A Saba

Movant(s):

Mathew Grimshaw	Pro Se
Larry D Simons (TR)	Represented By George A Saba Matthew Grimshaw
D. Edward Hays	Pro Se
Larry D Simons (TR)	Pro Se
Marshack Hays LLP	Pro Se
D. Edward Hays	Represented By George A Saba Matthew Grimshaw
Larry D Simons (TR)	Pro Se
Marshack Hays LLP	Represented By George A Saba Matthew Grimshaw
Mathew Grimshaw	Represented By George A Saba Matthew Grimshaw
David Wood	Represented By George A Saba Matthew Grimshaw

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CONT... Nabeel Slaieh

Chapter 7

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

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6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#51.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01224. Complaint by Larry D. Simons (TR) against Nabeel Naiem Slaieh, Joanne Fraleigh. (Charge To Estate \$350.00). Complaint for Avoidance and Recovery of Unauthorized Post-Petition Transfer (Attachments: # 1 Part 2 of 2 # 2 Adversary Proceeding Cover Sheet) Nature of Suit: (14 (Recovery of money/property - other))

From: 11/2/16, 2/1/17, 2/15/17, 4/26/17, 5/17/17

Also #50 - #52

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

David A. Wood

Pro Se

Joanne Fraleigh

Represented By
George A Saba

Nabeel Naiem Slaieh

Represented By
George A Saba

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

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Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

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6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#52.00 CONT Status Conference RE: [39] Counterclaim by Nabeel Naiem Slaieh against Mathew Grimshaw, D. Edward Hays, Marshack Hays LLP, Larry D Simons (TR), David Wood

From: 4/26/17, 5/17/17

Also #50 & #51

EH__

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

Joanne Fraleigh

Represented By
George A Saba

Nabeel Naiem Slaieh

Represented By
George A Saba

David A. Wood

Pro Se

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

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CONT... Nabeel Slaieh

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Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

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Thursday, June 08, 2017

Hearing Room 303

12:30 PM

6:11-43583 Richard H Brown, Jr.

Chapter 13

Adv#: 6:17-01029 Cohen v. Bank of America, NA et al

#1.00 CONT Status Conference Re Complaint by Amrane Cohen against Bank of America, NA, Ocwen Loan Servicing, LLC, New Penn Financial LLC dba Shellpoint Mortgage Servicing: Nature of Suit: 14 - Recovery of money/property - other, 02 - Other: e.g. other actions that would have been brought in state court if unrelated to bankruptcy, 91 - Declaratory judgment

From: 4/6/17, 5/11/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard H Brown Jr.

Represented By
Gary J Holt

Defendant(s):

Ocwen Loan Servicing, LLC

Pro Se

Bank of America, NA

Pro Se

Plaintiff(s):

Amrane Cohen

Pro Se

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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6:11-35849 Michael G Owens and Jennifer L Owens

Chapter 13

#2.00 Hearing re Objection To Entry Of Discharge

EH__

Docket 73

***** VACATED *** REASON: WITHDRAWAL FILED 5/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael G Owens Pro Se

Joint Debtor(s):

Jennifer L Owens Pro Se

Trustee(s):

Amrane (RS) Cohen (TR) Pro Se

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6:12-31644 Regina Kaye Paige

Chapter 13

#3.00 Motion for Authority to Sell or Refinance Real Property under LBR 3015-1 (Ch 13)-No Fee

EH__

Docket 55

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/15/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Regina Kaye Paige

Represented By
April E Roberts

Movant(s):

Regina Kaye Paige

Represented By
April E Roberts
April E Roberts
April E Roberts

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

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6:12-17224 Vance C. Marshall and Kim A. Marshall

Chapter 13

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

EH _____

Docket 72

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vance C. Marshall

Represented By
Norma Duenas

Joint Debtor(s):

Kim A. Marshall

Represented By
Norma Duenas

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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6:12-18561 William D. Sims and Nancy J. Sims

Chapter 13

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

From: 5/11/17

EH__

Docket 129

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William D. Sims

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Nancy J. Sims

Represented By
Patricia M Ashcraft

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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6:12-18773 Tara D Resgonia

Chapter 13

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

EH__

Docket 76

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tara D Resgonia

Represented By
Dale Parham - INACTIVE -
Michael Smith

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

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Hearing Room 303

12:31 PM

6:12-21612 Amir El-Jamil McNeely and Veronica Guadalupe McNeely Chapter 13

#7.00 Motion (Verified) for Order Dismissing Chapter 13 Case

EH__

Docket 105

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amir El-Jamil McNeely

Represented By
Steven A Alpert

Joint Debtor(s):

Veronica Guadalupe McNeely

Represented By
Steven A Alpert

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:31 PM

6:12-23627 Michael L Anderson

Chapter 13

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

EH__

Docket 140

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael L Anderson

Represented By
Javier H Castillo

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:31 PM

6:12-37351 Blanca Estela Flores

Chapter 13

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

EH__

Docket 105

***** VACATED *** REASON: WITHDRAWAL FILED 6/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blanca Estela Flores

Represented By
John F Brady
Lisa H Robinson

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:31 PM

6:12-37992 Viet N. Tran

Chapter 13

#10.00 Motion for Order Dismissing Chapter 13 Proceeding

EH__

Docket 36

***** VACATED *** REASON: WITHDRAWAL FILED 6/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Viet N. Tran

Represented By
April E Roberts

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:16-11303 Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

#11.00 CONT Trustee's Motion to Dismiss Case for Delinquency

From: 3/23/17, 4/27/17, 5/11/17, 6/1/17

Also #12

EH__

Docket 56

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Robert Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:16-11303 Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

#12.00 CONT Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

From: 3/23/17, 4/27/17, 5/11/17, 6/1/17

Also #11

EH__

Docket 61

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Robert Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Hillary Allyne Byrne

Represented By
Jenny L Doling
Summer M Shaw

Joseph Robert Byrne

Represented By
Jenny L Doling
Jenny L Doling
Summer M Shaw
Summer M Shaw

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

CONT... Joseph Robert Byrne and Hillary Allyne Byrne

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:16-12069 Aristottle T Saquilabon

Chapter 13

#13.00 Amended Application for Compensation/Supplemental Fees for Emilia N McAfee, Debtor's Attorney, Period: 2/15/2017 to 3/1/2017, Fee: \$700

CASE DISMISSED 6/2/17

EH__

Docket 93

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Aristottle T Saquilabon

Represented By
Emilia N McAfee

Movant(s):

Aristottle T Saquilabon

Represented By
Emilia N McAfee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:16-20003 Pamula Raye St Dennis

Chapter 13

#14.00 Chapter 13 Confirmation of Plan

EH__

Docket 0

*** VACATED *** REASON: CONTINUED TO 7/6/17 AT 12:30 P.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pamula Raye St Dennis

Represented By
Cynthia A Dunning

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:17-12420 Frank Castodio

Chapter 13

#15.00 CONT Confirmation of Chapter 13 Plan

From: 5/4/17, 6/1/17

EH _____

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Castodio

Represented By
Lauren Rode

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:17-12907 Gilbert R Nava

Chapter 13

#16.00 CONT Confirmation of Chapter 13 Plan

From: 5/11/17

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gilbert R Nava

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:17-13608 Warren Alan Hall and Kelly Suzanne Hall

Chapter 13

#17.00 Chapter 13 Confirmation of Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Warren Alan Hall

Represented By
Lionel E Giron

Joint Debtor(s):

Kelly Suzanne Hall

Represented By
Lionel E Giron

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:17-13635 Librada Salazar

Chapter 13

#18.00 Chapter 13 Confirmation of Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 5/19/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Librada Salazar

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:17-13675 Jose Parada and Ana Parada

Chapter 13

#19.00 Chapter 13 Confirmation of Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Parada

Represented By
Jennifer Ann Aragon

Joint Debtor(s):

Ana Parada

Represented By
Jennifer Ann Aragon

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:17-13686 David K Johnson and Janet L Johnson

Chapter 13

#20.00 Chapter 13 Confirmation of Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David K Johnson

Represented By
Gary J Holt

Joint Debtor(s):

Janet L Johnson

Represented By
Gary J Holt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:17-13719 Sam Venero

Chapter 13

#21.00 Chapter 13 Confirmation of Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sam Venero

Represented By
Edward T Weber

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:17-13730 Robert Heacock

Chapter 13

#22.00 Chapter 13 Confirmation of Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 5/22/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Heacock

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:17-13778 Maria F Hurtado

Chapter 13

#23.00 Chapter 13 Confirmation of Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 5/23/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria F Hurtado

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:17-13804 John P Morris and Cassandra M Morris

Chapter 13

#24.00 Chapter 13 Confirmation of Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John P Morris

Represented By
Michael Smith

Joint Debtor(s):

Cassandra M Morris

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:17-13809 Jose R. Castaneda and Miriam L Castaneda

Chapter 13

#25.00 Chapter 13 Confirmation of Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose R. Castaneda

Represented By
Michael Smith

Joint Debtor(s):

Miriam L Castaneda

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

6:17-14228 Michelle Meredith

Chapter 7

#26.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Residence; Car; Motorcycle

MOVANT: MICHELLE MEREDITH

EH__

Docket 17

Tentative Ruling:

06/08/2017

Notice of the hearing was defective based on the following: The Debtor checked the wrong box for the Shortened Notice portion of the Notice of Motion. The Debtor should have checked the box indicating that the Order Setting Hearing on Shortened Notice was not required but instead checked the box indicating that an application for hearing was still pending and that a separate notice would be served if that Debtor's application was granted.

Separately, as to the merits, the prior case was filed as a chapter 13 case and was dismissed due to various deficiencies with the pro se filing and due to the Debtor's failure to tender her payment to the Chapter 13 trustee at the confirmation hearing. Based on the Debtor's filing of a chapter 7 case rather than a chapter 13 case, the grounds for dismissal in the prior case are not be reflected by the current filing. As such, the Court finds the presumption that this case was not filed in good faith has been rebutted.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Michelle Meredith

Represented By
Patricia M Ashcraft

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:32 PM

CONT... Michelle Meredith

Chapter 7

Movant(s):

Michelle Meredith

Represented By
Patricia M Ashcraft

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:33 PM

6:13-17553 Kenneth Vernell Hawkins and Brenda A Hawkins

Chapter 13

#27.00 CONT Trustee's Motion to Dismiss Case

From: 3/23/17, 4/27/17, 5/11/17, 5/18/17, 6/1/17

EH__

Docket 97

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth Vernell Hawkins

Represented By
Craig J Beauchamp

Joint Debtor(s):

Brenda A Hawkins

Represented By
Craig J Beauchamp

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:33 PM

6:13-19250 Robert B Eppley

Chapter 13

#28.00 Trustee's Motion to Dismiss Case

EH__

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert B Eppley

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:33 PM

6:14-15197 Ana P Montes de Oca

Chapter 13

#29.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 105

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ana P Montes de Oca

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:33 PM

6:14-19524 Donnita M. Oliver

Chapter 13

#30.00 Trustee's Motion to Dismiss Case

EH__

Docket 63

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donnita M. Oliver

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:33 PM

6:14-22362 James Lange and Michelle Lange

Chapter 13

#31.00 Trustee's Motion to Dismiss Case

EH__

Docket 97

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Lange

Represented By
Michael Smith

Joint Debtor(s):

Michelle Lange

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:33 PM

6:14-23678 Liliana Gomez

Chapter 13

#32.00 CONT Trustee's Motion to Dismiss Case

From: 6/1/17

EH__

Docket 92

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liliana Gomez

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:33 PM

6:14-25360 William Meineke and Kathie Meineke

Chapter 13

#33.00 Trustee's Motion to Dismiss Case

EH__

Docket 53

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Meineke

Represented By
Todd B Becker

Joint Debtor(s):

Kathie Meineke

Represented By
Todd B Becker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:33 PM

6:16-10604 Juan Manuel Plascencia De La Torre

Chapter 13

#34.00 CONT Trustee's Motion to Dismiss Case

From: 6/1/17

EH__

Docket 51

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Manuel Plascencia De La Torre

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:33 PM

6:16-11745 Alfredo Manzo Arrieta and Mayte Hernandez- Arrieta

Chapter 13

#35.00 CONT Trustee's Motion to Dismiss Case

From: 6/1/17

EH__

Docket 100

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alfredo Manzo Arrieta

Represented By
Andy C Warshaw

Joint Debtor(s):

Mayte Hernandez- Arrieta

Represented By
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:33 PM

6:16-13388 James Leonard Blow, Jr. and Amanda Joyce Atkinson-Blow Chapter 13

#36.00 CONT Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

From: 6/1/17

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Leonard Blow Jr.

Represented By
Jonathan D Doan

Joint Debtor(s):

Amanda Joyce Atkinson-Blow

Represented By
Jonathan D Doan

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:33 PM

6:16-13637 Noel Mallari

Chapter 13

#37.00 Trustee's Motion to Dismiss Case

EH__

Docket 24

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Noel Mallari

Represented By
David L Nelson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:33 PM

6:16-16110 Peter J. Giummo

Chapter 13

#38.00 CONT Trustee's Motion to Dismiss Case

From: 5/18/17

EH __

Docket 43

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peter J. Giummo

Represented By
Bruce D White

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:33 PM

6:16-16616 Timothy Wade Jones

Chapter 13

#39.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 36

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy Wade Jones

Represented By
Norma Duenas

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:33 PM

6:16-17683 Cresencio Villamayor Irasusta, III and Jennifer P Irasusta Chapter 13

#40.00 CONT Motion for Order Dismissing Chapter 13 Case (Tax Returns / Refunds)

From: 4/27/17, 5/11/17

EH__

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cresencio Villamayor Irasusta III

Represented By
Carey C Pickford

Joint Debtor(s):

Jennifer P Irasusta

Represented By
Carey C Pickford

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 08, 2017

Hearing Room 303

12:33 PM

6:16-20929 Don Stevie Gurule and Elaine Louise Gurule

Chapter 13

#41.00 Trustee's Motion to Dismiss Case

EH__

Docket 20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Don Stevie Gurule

Represented By
Dana Travis

Joint Debtor(s):

Elaine Louise Gurule

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 13, 2017

Hearing Room 303

9:30 AM

6:16-15351 Juan Vaca Diaz

Chapter 7

#1.00 Evidentiary Hearing re Motion for fine and/or disgorgement of fees against bankruptcy petition preparer Notice of Motion and Motion of United States Trustee for an Order Disgorging Fees, Assessing Damages, and Imposing Fines Against Bankruptcy Petition Preparers Manuel Pablo and Empire Desert Associates Pursuant to 11 U.S.C. § 110

EH__

Docket 21

Party Information

Debtor(s):

Juan Vaca Diaz

Represented By
Edgar P Lombera

Movant(s):

United States Trustee (RS)

Represented By
Abram Feuerstein esq
Mohammad Tehrani

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 14, 2017

Hearing Room 303

9:30 AM

6:14-21429 Phillip Carver Myers
Adv#: 6:15-01198 Myers v. Myers et al

Chapter 11

**#1.00 Settlement Conference
(Judge Jury Case)**

Docket 0

***** VACATED *** REASON: PER REQUEST OF THE PARTIES**

Party Information

Debtor(s):

Phillip Carver Myers

Represented By
Bert Briones
David P Pruet
Richard G Heston
Richard A Marshack
David Wood
Elmer D Martin III
Matthew Grimshaw
D Edward Hays

Defendant(s):

TD Ameritrade, Inc.

Pro Se

Victoria C. Myers

Represented By
Thomas Armstrong

Plaintiff(s):

Phillip Carver Myers

Represented By
Richard G Heston

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 14, 2017

Hearing Room 303

9:30 AM

6:14-21429 Phillip Carver Myers
Adv#: 6:16-01041 Myers v. Myers

Chapter 11

#2.00 Settlement Conference
(Judge Jury Case)

Docket 0

*** VACATED *** REASON: PER REQUEST OF THE PARTIES

Party Information

Debtor(s):

Phillip Carver Myers

Represented By
Bert Briones
David P Pruet
Richard G Heston
Richard A Marshack
David Wood
Elmer D Martin III
Matthew Grimshaw
D Edward Hays

Defendant(s):

Cristina Victoria Myers

Represented By
Thomas Armstrong

Plaintiff(s):

Phillip C Myers

Represented By
Sarah Cate Hays
D Edward Hays
Richard G Heston
David Wood

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 14, 2017

Hearing Room 303

11:00 AM

6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:14-01248 Revere Financial Corporation, a California corpora v. Roger, MD

#3.00 CONT Status Conference RE: Complaint by Revere Financial Corporation, a California corporation, Jerry Wang against Douglas J Roger MD. false pretenses, false representation, actual fraud, 68 Dischargeability - 523(a)(6), willful and malicious injury, 67 Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 41 Objection / revocation of discharge - 727(c),(d),(e) **(Holding date)**

From: 11/26/14, 1/26/15, 1/28/15, 4/15/15, 7/22/15, 9/23/15, 1/27/16, 6/29/16, 9/28/16, 11/16/16, 2/1/17, 2/16/17, 5/3/17

Also #4

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 6/28/17 AT 11:00 A.M.**

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Douglas J Roger MD

Represented By
Summer M Shaw

Plaintiff(s):

A. Cisneros

Represented By
Chad V Haes
D Edward Hays

Jerry Wang

Represented By
Franklin R Fraley Jr
Anthony J Napolitano

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 14, 2017

Hearing Room 303

11:00 AM

CONT... **Douglas Jay Roger**
Revere Financial Corporation, a

Represented By
Franklin R Fraley Jr

Chapter 7

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:14-01248 Revere Financial Corporation, a California corpora v. Roger, MD

#4.00 CONT Motion to Dismiss Adversary Proceeding Claims of Plaintiff, Jerry Wang, and to Strike and for a More Definite Statement as to Plaintiff, Revere Financial Corporation
(Holding date)

From: 11/5/14, 12/3/14, 12/15/14, 1/28/15, 4/15/15, 7/22/15, 9/23/15, 1/27/16
6/29/16, 9/28/16, 11/16/16, 2/1/17, 2/16/17, 5/3/17

Also #3

EH__

Docket 10

***** VACATED *** REASON: CONTINUED TO 6/28/17 AT 11:00 A.M.**

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Douglas J Roger MD

Represented By
Summer M Shaw

Movant(s):

Douglas J Roger MD

Represented By
Summer M Shaw

Plaintiff(s):

A. Cisneros

Represented By
Chad V Haes
D Edward Hays

Jerry Wang

Represented By
Franklin R Fraley Jr

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CONT... Douglas Jay Roger

Chapter 7

Revere Financial Corporation, a

Anthony J Napolitano

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:13-27611 Douglas Jay Roger

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**#5.00 CONT Objection to Claim #17 by Revere Financial Corporation
(Holding date)**

From: 10/1/14, 11/5/14, 12/3/14, 12/15/14, 1/28/15, 4/15/15, 7/22/15, 9/23/15,
10/21/15, 11/18/15, 12/16/15, 1/13/16, 3/2/16, 5/4/16, 6/1/16, 9/28/16, 11/16/16,
2/1/17, 2/16/17, 5/3/17

Also #6

EH____

Docket 333

***** VACATED *** REASON: CONTINUED TO 6/28/17 AT 11:00 A.M.**

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:13-27611 Douglas Jay Roger

Chapter 7

#6.00 CONT Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Jerry Wang, State Court Receiver
(Holding date)

MOVANT: JERRY WANG, STATE COURT RECEIVER

From: 12/3/14, 12/15/14, 1/28/15, 4/15/15, 7/22/15, 9/23/15, 1/27/16, 6/29/16, 9/28/16, 11/16/16, 2/1/17, 2/16/17, 5/3/17

Also #5

EH____

Docket 423

***** VACATED *** REASON: CONTINUED TO 6/28/17 AT 11:00 A.M.**

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Movant(s):

Jerry Wang, Duly-Appointed State

Represented By
Jeffrey K Garfinkle
Anthony J Napolitano

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

#7.00 CONT Motion to Approve Compromise Under Rule 9019 Filed Jointly by Chapter 7 Trustee and Revere Financial Corporation to Approve Settlement Contract Between Chapter 7 Trustee and Revere Financial Corporation

From: 3/1/17, 5/3/17

EH__

Docket 440

***** VACATED *** REASON: CONTINUED TO 6/28/17 AT 11:00 A.M.**

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

Adv#: 6:17-01059 ASR Constructors Inc a California Corporation et a v. Gotte Electric, Inc. et

#1.00 CONT Status Conference RE: Complaint by ASR Constructors Inc a California Corporation, Another Meridian Company, LLC, Inland Machinery, Inc. against Gotte Electric, Inc., Insurance Company Of The West, Employment Development Department, Trico-Savi Business Park, L.P., a California limited partnership, Angela Denise McKnight, Cardlock Fuels Systems Inc., Steven Schonder, Western Alliance Bank, an Arizona corporation, UNITED STATES OF AMERICA, Carlin Law Group APC, Ledcor Construction, Inc., a Washington corporation, Bangerter Frazier & Graff PC. (Charge To Estate \$350.00). Nature of Suit: 02- Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

From: 5/16/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

Defendant(s):

UNITED STATES OF AMERICA

Represented By
Charles Parker

Western Alliance Bank, an Arizona

Pro Se

Carlin Law Group APC

Represented By
Kevin R Carlin

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Bangerter Frazier & Graff PC	Represented By Daniel P Wilde
Ledcor Construction, Inc., a	Represented By Daniel P Scholz
Insurance Company Of The West	Represented By Jennifer Leland David B Shemano
Gotte Electric, Inc.	Pro Se
Employment Development	Pro Se
Steven Schonder	Pro Se
Angela Denise McKnight	Pro Se

Plaintiff(s):

Inland Machinery, Inc.	Represented By James C Bastian Jr
Another Meridian Company, LLC	Represented By James C Bastian Jr
ASR Constructors Inc a California	Represented By James C Bastian Jr

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6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

Adv#: 6:17-01059 ASR Constructors Inc a California Corporation et a v. Gotte Electric, Inc. et

#2.00 CONT Motion for Order Authorizing Deposit of Disputed Funds and Granting Related Interpleader Relief

From: 5/30/17

EH__

Docket 37

Tentative Ruling:

6/19/17

PROCEDURAL BACKGROUND

On September 20, 2013, ASR Constructors, Inc. ("Debtor") filed a Chapter 11 voluntary petition. On October 23, 2013, related entities Another Meridian Company, LLC ("Meridian") and Inland Machinery, Inc. ("Inland") (collectively, "Debtors") filed Chapter 11 voluntary petitions. On November 1, 2013, the Court ordered joint administration of the estates of Debtor, Meridian and Inland.

Prior to the filing of the bankruptcy petition, Gotte Electric, Inc. ("Gotte") filed a state court complaint against Debtors and Federal Insurance Company ("FIC") to set aside a fraudulent transfer. Upon Debtor's filing of a Chapter 11 petition, the action was removed to the bankruptcy court.

On November 17, 2015, Debtors filed a motion to approve compromise. On November 24, 2015, UST filed an objection. On December 1, 2015, Insurance

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CONT... ASR Constructors Inc a California Corporation Chapter 11

Company of the West ("ICW") filed an objection. After further briefing, the Court granted the motion to approve the compromise, and an order was entered approving the compromise on December 30, 2015.

On January 8, 2016, Debtors' bankruptcy cases were dismissed. On February 13, 2017, Debtors' bankruptcy cases were reopened. On March 14, 2017, upon request by Debtors the Court modified the seventh paragraph of its dismissal order as follows:

~~7. Except for the claims asserted in the declaratory relief action filed by ICW and/or Gotte pursuant to the Settlement Agreement, this Court shall retain exclusive jurisdiction to enforce the provisions of the Settlement Agreement, 9019 Order and this Dismissal Order and to resolve any dispute(s) concerning the Settlement Agreement, the 9019 Order and/or this Dismissal Order or the rights and duties of the parties hereunder or thereunder or any issues relating to the Settlement Agreement, the 9019 Order and/or this Dismissal Order, including, interpretation of the terms, conditions and provisions thereof, and all issues and disputes arising in connection with the relief authorized under Settlement Agreement, the 9019 Order and/or this Dismissal Order.~~

On March 17, 2017, Debtors filed a complaint in interpleader against Gotte and other parties. On May 8, 2017, Debtors filed a motion for authorization to deposit disputed funds and for interpleader relief. At a status conference on May 16, 2017, the Court expressed some concerns with the relief requested, and Debtors filed a modification to motion on June 5, 2017.

FACTUAL BACKGROUND

Debtor was a general contractor. In connection with Debtor's work, FIC issues a number of surety performance and payment bonds on Debtor's behalf. Debtors and their principals, in return, executed various indemnity and collateral agreements in favor of FIC.

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Gotte was Debtor's sub-contractor on three projects. On May 28, 2013, Gotte obtained a state court judgment against Debtor in the amount of \$6,655,486.47, and on July 1, 2013, Gotte filed a UCC judgment lien against Debtor. On February 1, 2010, while the state court litigation was pending, Debtor transferred certain real property (the "Meridian Property") to Meridian for \$3,100,000 and certain equipment and machinery (the "Equipment") to Inland for \$3,780,458. These transfers were the subject of the fraudulent transfer action commenced by Gotte. FIC has a lien on the Meridian Property, the Equipment, and Debtor's accounts receivable.

On December 17, 2013, the Court authorized the sale of that part of the Meridian Property located in the city of Riverside for a purchase price of \$3,150,000. Net proceeds of the sale, totaling \$1,790,000 were held in a DIP account, subject to the claims of Gotte, FIC, Berkley Regional Insurance Company ("BRIC") and ICW. Additionally, net proceeds of the sale of certain real property located in Phelan, totaling \$50,000, were held in a DIP account subject to the claims of FIC and BRIC, and net proceeds of an auction sale of the Equipment, totaling \$1,006,000, were held in a DIP account subject to the lien of FIC. The total amount of funds on hand at the time of the filing of the compromise motion was \$3,152,360.28.

As part of the compromise motion, FIC agreed to grant a carve-out from its collateral in the amount of \$200,000 plus 45% of net proceeds from the sale of the remainder of the Meridian Property. The various parties' respective rights to the FIC carve-out were not determined by the compromise motion.

On December 24, 2015, ICW filed a complaint in state court for declaratory relief and interpleader. On February 9, 2016, the IRS filed a notice of removal, removing the case to federal district court. On May 24, 2016, the district court dismissed the case upon motion of the IRS for lack of subject matter jurisdiction. As such, it is not clear that the interpleader action can be heard in either state court or federal district court.

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DISCUSSION

Debtors request two categories of relief: (1) authority to deposit the funds constituting the FIC carve-out (the "Funds") into the court registry; and (2) various interpleader relief.

I. Deposit of Funds in Court Registry

Fed. R. Bankr. P. Rule 7067 incorporates Fed. R. Civ. P. Rule 67. FRCP Rule 67(a) states:

If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party – on notice to every other party and by leave of court – may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

FRCP Rule 67 is properly invoked when there is a live dispute regarding the entitlement to the funds in question. *See generally Alstom Caribe, Inc. v. George P. Reintjes Co., Inc.*, 484 F.3d 106, 113 (1st Cir. 2007) ("The core purpose of Rule 67 is to relieve a party who holds a contested fund from responsibility for disbursement of that fund among those claiming some entitlement thereto."); *see also Garrick v. Weaver*, 888 F.2d 687, 694 (10th Cir. 1989) ("The language of Rule 67 leaves to the discretion of the district court the decision as to whether to permit the deposit of funds in court. . . . The magistrate acted well within his discretionary authority in allowing the funds to be paid into court and excusing the defendants. His decision both ensured that the settlement fund would be available for disbursement and facilitated judicial economy by permitting the defendants, who no longer had an interest in the funds or in these proceedings, to withdraw.").

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Here, there is clearly a live dispute regarding entitlement to the Funds.

II. Interpleader Relief

Debtors' original motion requested that the Court grant the following five forms of relief: (1) discharge Debtors from further liability to the named defendants; (2) dismissal of Debtors, with prejudice, from the adversary; (3) entry of a permanent injunction preventing Defendants from asserting claims against Debtor relating to the settlement funds; (4) requiring the named defendants to litigate between themselves; (5) an award of costs and reasonable attorney fees. Debtors' modification to the motion withdrew the last request, and modified the second request to reduce Debtors' role in the action to that of a monitoring capacity.

"In an interpleader action, the 'stakeholder' of a sum of money sues all those who might have claim to the money, deposits the money with the district court, and lets the claimants litigate who is entitled to the money." *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1265 (9th Cir. 1992). Procedurally,

An interpleader action typically involves two stages. In the first stage, the district court decides whether the requirements for rule or statutory interpleader action have been met by determining if there is a single fund at issue and whether there are adverse claimants to that fund. If the district court finds that the interpleader action has been properly brought the district court will then make a determination of the respective rights of the claimants.

Rhoades v. Casey, 196 F.3d 592, 600 (5th Cir. 1999) (citations omitted).

Here, Debtors are relying on rule interpleader. Fed. R. Civ. P. Rule 22(a)(1), incorporated into bankruptcy proceedings by Fed. R. Bankr. P. Rule 7022(a), states:

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- (1) **By a Plaintiff.** Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:
- (A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or
 - (B) the plaintiff denies liability in whole or in part to any or all of the claimants.

Here, the various defendants' actual or potential claims to the Funds may expose Debtors to multiple liability. Therefore, an interpleader action is appropriate.

In cases where an interpleader action is appropriate, *Collier* states the following:

By turning over the fund or the property as directed by the court, the plaintiff may be discharged from the proceeding and any further liability. There may be an injunction issued to prevent the adverse claimants from further pursuing the stakeholder. On a finding that interpleader is proper, the court will then enter an order requiring the claimants to the fund or property to interplead.

10 *Collier on Bankruptcy* ¶ 7022.01 (16th ed. 2013); *see also* 28 U.S.C. § 2361. Here, Debtors' requests closely track the language identified in *Collier's* and, in the absence of opposition, appear appropriate here.

III. Jurisdictional Statement

A. Bankruptcy Court Jurisdiction

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Nevertheless, the Court must determine whether it has subject matter jurisdiction. *See, e.g., In re Strawberry*, 464 B.R. 443, 447 (Bankr. N.D. Fla. 2012). This complaint in interpleader was filed in a dismissed bankruptcy case and would result in litigation over non-bankruptcy claims between non-debtor parties.

28 U.S.C. § 157 provides for four categories of cases which the district court may refer to the bankruptcy court: (1) cases under title 11; (2) proceedings arising under title 11; (3) proceedings arising in a case under title 11; and (4) proceedings related to a case under title 11. *See, e.g., In re S&M Constructors, Inc.*, 144 B.R. 855, 858 (Bankr. W.D. Mo. 1992). Additionally, 28 U.S.C. § 157(b) divides matters into core and non-core proceedings.

The first category, cases under title 11, refers to the bankruptcy case commenced by the filing of the petition. *See, e.g., In re Wood*, 825 F.2d 90, 92 (5th Cir. 1987). This category is inapplicable here, as the matter at issue is a complaint in interpleader.

The second category, proceedings arising under title 11, refers to those actions that are expressly created by title 11. *See, e.g., In re Wolverine Radio Co., Inc.*, 930 F.2d 1132, 1141, n.14 (6th Cir. 1991). This category is inapplicable here – the underlying liability is premised upon state law claims.

The third category¹, proceedings arising in a case under title 11, refers to claims that, although not created by title 11, would have no existence absent the bankruptcy, such as administrative matters. *See, e.g., In re Repository Techs., Inc.*, 601 F.3d 710, 719 (7th Cir. 2010). This category is inapplicable here.

The fourth category, proceedings related to a case under title 11, contains two different subsets: (1) causes of action owned by the debtor that become property of the estate under § 541; and (2) suits between third parties which in one way or another affect the administration of the bankruptcy case. *Id.* It is only the latter category that is potentially invoked by this proceeding.

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The primary test for related to jurisdiction is the Third Circuit's *Pacor* test:

The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy*. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action . . . and which in any way impacts upon the handling and administration of the bankrupt estate.

Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984). The Supreme Court previously acknowledged the prevalence of the *Pacor* test:

In attempting to strike an appropriate balance, the Third Circuit in *Pacor, Inc. v. Higgins*, 743 F.2d 984 (1984), devised the following test for determining the existence of "related to" jurisdiction:

[Excerpt quoted above] . . .

The First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits have adopted the *Pacor* test with little or no variation. The Second and Seventh Circuits, on the other hand, seem to have adopted a slightly different test. But whatever test is used, these cases make clear that bankruptcy courts have no jurisdiction over proceedings that have no effect on the estate of the debtor.

Celotex Corp. v. Edwards, 514 U.S. 300, 308 n.6 (1995) (citations omitted).

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The Ninth Circuit has recently reiterated its approval of the *Pacor* test for pre-confirmation matters:

The test for post-confirmation "related to" jurisdiction was modified from the seminal pre-confirmation *Pacor* test for "related to" jurisdiction, which had been previously adopted by the Ninth Circuit in *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988). Surveying the courts that had applied a limited version of the *Pacor* test in the post-confirmation context, we recognized that the *Pacor* test of whether the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy . . . If the outcome could alter the debtor's rights, liabilities, options, or freedom of action . . . and which in any way impacts upon the handling and administration of the bankruptcy estate was somewhat overbroad in the post-confirmation context.

In re Wilshire Courtyard, 729 F.3d 1279, 1287 (9th Cir. 2013) (citations and quotations omitted).

First, it is unclear whether the complaint in interpleader would affect the administration of the bankruptcy estate, if a bankruptcy estate was being administered. Second, the Court must consider whether it can ever have "related to" jurisdiction in an action filed in a dismissed case because there is no estate to administer, and, consequently, such an action cannot affect administration of the estate.

B. The Effect of Dismissal on "Related to" Jurisdiction

The *Pacor* test includes two requirements: (1) the action must alter the rights or obligations of the debtor; and (2) the action must have an effect on the administration of the estate. *See, e.g., In re Bass*, 171 F.3d 1016, 1022 (5th Cir. 1999). This second prong becomes an issue when an action is filed in a dismissed case. *See, e.g., id.* ("The

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second prong, however, is problematical. Although the injunction would have an impact on the Debtor, it could not have any effect whatsoever on his estate in bankruptcy or its administration. First and foremost, such an estate no longer exists.").

A different situation arises when, *after* an action is commenced, the underlying bankruptcy case is dismissed. Courts have generally concluded that in such a situation, retention of jurisdiction is discretionary, and based on principles of equity and judicial economy. *See, e.g., In re Smith*, 866 F.2d 576, 580 (3rd Cir. 1989) ("Drawing upon an analogy to the disposition of ancillary and pendent claims, the courts have held that they may consider a number of factors to determine whether jurisdiction should be retained."). Such a situation is, however, fundamentally different from the situation here. *See id.* ("Appellees fail, however, to distinguish between the determination of the existence of jurisdiction at the outset of these proceedings and the determination of whether 'related' claims should be dismissed with the dismissal of the bankruptcy case or the discharge of the debtor."); *In re Fietz*, 852 F.2d 455, 457 n.2 (9th Cir. 1988) ("Subject matter jurisdiction should be determined as of the date that the complaint, or in this case the cross-claim, was filed.").

In developing a standard for when a bankruptcy court should retain jurisdiction following the dismissal of the underlying case, courts have analogized the situation to a district court's retention of pendent state claims following dismissal of the federal claims. *See, e.g., In re Porges*, 44 F.3d 159, 162-63 (2nd Cir. 1995); *In re Carraher*, 971 F.2d 327, 328 (9th Cir. 1992); *In re Casamont Investors, Ltd.*, 196 B.R. 517, 522 (B.A.P. 9th Cir. 1996) ("In determining whether the bankruptcy court abused its discretion by retaining jurisdiction over related proceedings, the Ninth Circuit and several other circuits have analogized to cases concerning the propriety of district courts retaining jurisdiction over pendent state law claims after federal claims have been dismissed."). Applying that analogy and the applicable standard to the matter at issue here reveals the fundamental problem: a district court can never exercise pendent jurisdiction over state law claims when, at their commencement, there is no existing federal claim for the state claims to supplement. In the bankruptcy context, the Court cannot exercise related to jurisdiction if there is no bankruptcy case for the complaint to relate to.

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C. Ancillary or Retained Jurisdiction

Attempts have been made to avoid this issue by arguing for the existence of supplemental or retained jurisdiction. *See In re Bass*, 171 F.3d 1016, 1023-242 (5th Cir. 1999) (supplemental) ("Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts, and the exercise of *ancillary and pendent* jurisdiction by bankruptcy courts could subsume the more restrictive 'related to' and 'arising in' jurisdiction, such that the latter would be rendered substantially, if not entirely, superfluous."); *id.* at 1025 (retained) ("[B]efore a court can exercise its discretion to 'retain' jurisdiction over a 'related proceeding,' the court must have had jurisdiction over that proceeding in the first place. The Denneys did not file their suit in Texas until *after* the bankruptcy case in Utah had been closed. From a purely temporal standpoint, there was no proceeding over which bankruptcy court jurisdiction could be 'retained.'"); *see also In re Morris*, 950 F.2d 1531, 1534 (11th Cir. 1992) (same). The Ninth Circuit has previously discussed the application of supplemental, or ancillary, jurisdiction in the context of interpreting a settlement agreement in a Chapter 11 structured dismissal:

Here, when Sea Hawk filed its adversary proceeding, VFDA's Chapter 11 case had been dismissed and a final decree entered. . . .

The bankruptcy court has no role in the resolution of the creditors' dispute, and it is involved only fortuitously because the dispute implicates the terms of a settlement agreement approved by the court as a precondition of the dismissal of VFDA's bankruptcy. . . .

The bankruptcy court did not consider dismissal of VFDA's bankruptcy to automatically divest it of jurisdiction over a related case. It reasoned that after dismissal, the court has discretion to retain jurisdiction over a related proceeding, *citing In re Carraher*, 971 F.2d 327, 328 (9th Cir. 1992). . . .

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Carraher does not support the bankruptcy court's decision. It stands for the proposition that a bankruptcy court may retain jurisdiction over a related proceeding pending at the time of the dismissal of the bankruptcy case. It does not support the assertion of bankruptcy jurisdiction over a proceeding initiated subsequent to the dismissal of the bankruptcy case.

In re Valdez Fisheries Dev. Ass'n, Inc., 439 F.3d 545, 547-48 (9th Cir. 2006). *Valdez Fisheries*, however, made clear that the result may have been different had the Court's dismissal order explicitly retained jurisdiction over the dispute in question. *See id.* at 549 ("Ancillary jurisdiction may rest on one of two bases: (1) to permit disposition by a single court of factually interdependent claims, and (2) to enable a court to vindicate its authority and effectuate its decrees.") (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 79-80 (1994)). The second purpose of *Kokkonen's* retained, related-to jurisdiction is at issue here.

Nevertheless, the second prong of the *Kokkonen* test has its limits. *See, e.g., In re Ray*, 624 F.3d 1124, 1136 (9th Cir. 2010) ("In short, hearing a breach of contract claim predicated on evidence that came to light after a bankruptcy case had closed, its creditors paid, and the debtor discharged, stretches the limits of the bankruptcy court's ancillary jurisdiction too far, going beyond what is necessary for the bankruptcy court to 'effectuate its decrees.' . . . Reopening of the bankruptcy case is rare, and only used when necessary to resolve bankruptcy issues, not to adjudicate state law claims that can be adjudicated in state court.") (citation omitted). Importantly, an explicit retention of jurisdiction is only valid to the extent that jurisdiction is retained over claims that could have been heard at the time that jurisdiction was retained. *See, e.g., In re Nobel Group, Inc.*, 529 B.R. 284, 292 (Bankr. N.D. Cal. 2015). To conclude otherwise would be to allow bankruptcy courts to craft their own jurisdictional authority. *See, e.g., In re Resorts Int'l, Inc.*, 372 F.3d 154, 161 (3rd Cir. 2004) ("[N] either the bankruptcy court nor the parties can write their own jurisdictional ticket. When a court lacks subject matter jurisdiction over a dispute, the parties cannot create it by agreement even in a plan of reorganization.").

First, there appears to be a problem in that jurisdiction was not conferred until the time of the dismissal order. Here, the retention of jurisdiction over the interpleader action was concurrent with dismissal of the case, and, as such, the claim for which

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CONT... ASR Constructors Inc a California Corporation Chapter 11

jurisdiction was retained could not have been filed until after the case was dismissed. As stated above, related to jurisdiction is determined at the time the claim is filed, but, importantly, is premised upon the existence of a case that the claim can be related to. Therefore, because the jurisdiction in question was only conferred in a dismissal order, there would no existing bankruptcy case at the time an interpleader action could have been filed, so as to confer related to jurisdiction. The Court is aware of the confusing nature of the issue.

Second, even if the retention of jurisdiction had been in the settlement order, and, as such, the retention of jurisdiction would have arisen in the context of an existing case, allowing related to jurisdiction to exist², it would be unclear, possibly unlikely, that the Court would have subject matter jurisdiction over the complaint in interpleader. As briefly alluded to in section B, *supra*, the Ninth Circuit has limited the *Pacor* "related to" test to pre-confirmation matters, and has imposed a more demanding test for post-confirmation matters. *See In re Pegasus Gold Corp.*, 394 F.3d 1189, 1194 (9th Cir. 2005). The rationale for this distinction is that the bankruptcy estate ceases to exist post confirmation. *See generally id. Pegasus Gold*, therefore, replaced the more liberal *Pacor* test with a "close nexus" test after the dissolution of the bankruptcy estate. *See id.* The "close nexus" test requires that the matter be directly affect the bankruptcy proceeding for subject matter jurisdiction to be present. *See id.* It is difficult to ascertain how the "close nexus" test could be satisfied when the basis for the complaint in interpleader, the settlement agreement, also contemplates that the bankruptcy proceedings will cease.

Furthermore, even if Debtors had modified the settlement order and could show that the "close nexus" test was satisfied, the pendent jurisdiction test alluded to in section B, *supra*, may also merit consideration. This test instructs the Court to consider the interests of "economy, convenience, fairness and comity." *See In re Carraher*, 971 F.2d 327, 328 (9th Cir. 1992).

The Court need not reach the "close nexus" or pendent jurisdiction tests at this point, however, for the following two reasons: (1) the modification of the dismissal order does not properly appear to confer jurisdiction on the Court, and (2) the settlement order expressly disclaims jurisdiction over the interpleader action.

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Chapter 11

TENTATIVE RULING

Based on the foregoing, the Court believes dismissal of the adversary for lack of subject matter jurisdiction is appropriate. The Court will consider whether to, on its own motion, amend the dismissal order to delete the retention of jurisdiction, and at the request of the parties, may continue the hearing for further briefing in light of the foregoing.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

ASR Constructors Inc a California	Represented By James C Bastian Jr Melissa Davis Lowe
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Defendant(s):

UNITED STATES OF AMERICA	Represented By Charles Parker
Western Alliance Bank, an Arizona	Pro Se
Carlin Law Group APC	Represented By Kevin R Carlin
Bangerter Frazier & Graff PC	Represented By Daniel P Wilde
Ledcor Construction, Inc., a	Represented By Daniel P Scholz
Insurance Company Of The West	Represented By Jennifer Leland David B Shemano

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CONT... ASR Constructors Inc a California Corporation

Chapter 11

Gotte Electric, Inc. Pro Se

Employment Development Pro Se

Steven Schonder Pro Se

Angela Denise McKnight Pro Se

Movant(s):

Inland Machinery, Inc. Represented By
James C Bastian Jr

Another Meridian Company, LLC Represented By
James C Bastian Jr

ASR Constructors Inc a California Represented By
James C Bastian Jr

Plaintiff(s):

Inland Machinery, Inc. Represented By
James C Bastian Jr

Another Meridian Company, LLC Represented By
James C Bastian Jr

ASR Constructors Inc a California Represented By
James C Bastian Jr

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6:11-31782 Dina Guadalupe Garay

Chapter 13

#1.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 3966 Camellia Dr, San Bernardno, CA 92407

MOVANT: USA BANK NATIONAL ASSOCIATION

From: 4/4/17, 5/16/17

EH__

Docket 68

***** VACATED *** REASON: CONTINUED TO 7/25/17 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dina Guadalupe Garay

Represented By
Aalok Sikand
Vito Torchia - DISBARRED -

Movant(s):

U.S. BANK NATIONAL

Represented By
Megan E Lees

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

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10:00 AM

6:12-16380 Zerry B Holefield

Chapter 13

#2.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 15183 Edelweis Street, Fontana, CA 92336

MOVANT: DEUTSCHE BANK NATIONAL TRUST CO

From: 5/9/17

EH__

Docket 110

Tentative Ruling:

5/9/2017

Service is Proper
Opposition: Yes

Subject to cure or APO discussions, the Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under ¶ 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Zerry B Holefield

Represented By
Dale Parham - INACTIVE -
Michael Smith

Movant(s):

Deutsche Bank National Trust

Represented By
Joely Khanh Linh Bui
Mark T. Domeyer
Daniel K Fujimoto

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CONT... Zerry B Holefield

Caren J Castle

Chapter 13

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:12-32682 Mark A Rowley and Catherine C Rowley

Chapter 13

#3.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 33035 Paoli Court, Temecula, CA 92592

MOVANT: HSBC BANK USA

EH__

Docket 92

Tentative Ruling:

June 20, 2017

Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay and ¶3. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Mark A Rowley

Represented By
Don E Somerville
Tate C Casey

Joint Debtor(s):

Catherine C Rowley

Represented By
Don E Somerville
Tate C Casey

Movant(s):

HSBC Bank USA, National

Represented By

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CONT... Mark A Rowley and Catherine C Rowley

Chapter 13

Alexander K Lee

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:12-37439 Victor M. Menez and Marilee J. Menez

Chapter 13

#4.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 505 Celebration Lane, Perris, CA 92570

MOVANT: DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST

EH__

Docket 54

***** VACATED *** REASON: ORDER ENTERED 5/31/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victor M. Menez

Represented By
Dale Parham - INACTIVE -
Michael Smith

Joint Debtor(s):

Marilee J. Menez

Represented By
Dale Parham - INACTIVE -
Michael Smith

Movant(s):

Deutsche ALT-A Securities

Represented By
Christina J O

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:13-14560 David Sandoval and Mary Celine Sandoval

Chapter 13

#5.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 35816 Country Ridge Rd, Yucaipa, CA 92399-3229

MOVANT: WELLS FARGO BANK NA

From: 4/25/17

EH__

Docket 71

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: Yes

While it appears to the Court that Debtors may have missed several mortgage payments over the past few years, the evidence provided by Wells Fargo is inadequate to establish cause for relief. Wells Fargo's Exhibit 5 includes unexplained "co-mingled funds adjustments", totaling more than \$20,000, and appears to document that Debtors have made their mortgage payments for at least eight months, in apparent contradiction of the motion's account of their post-confirmation delinquency. There is also a general incoherency in the organization of Exhibit 5's columns. As one example, payments made by Debtors for February and March 2016 appear on page 3, and are "applied" to payments due on June 2015, despite a payment being made in June 2015, documented on page 2, at a time when Debtors had a positive suspense balance. Wells Fargo's non-chronological organization of payment history is, at best, unclear.

APPEARANCES REQUIRED.

Party Information

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10:00 AM

CONT... David Sandoval and Mary Celine Sandoval

Chapter 13

Debtor(s):

David Sandoval

Represented By
Bryant C MacDonald

Joint Debtor(s):

Mary Celine Sandoval

Represented By
Bryant C MacDonald

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Dane W Exnowski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:13-15155 Luis Antonio Palomino and Mariella Roxana Palomino

Chapter 13

#6.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 7287 Parkside Place, Rancho Cucamonga, CA 91701-
6321

MOVANT: WELLS FARGO BANK NA

From: 4/25/17

EH _____

Docket 103

***** VACATED *** REASON: ORDER ENTERED 6/16/17**

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: Yes

Although relief from stay appears warranted, parties to address status of adequate
protection discussions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Luis Antonio Palomino

Represented By
David Lozano

Joint Debtor(s):

Mariella Roxana Palomino

Represented By
David Lozano

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CONT... Luis Antonio Palomino and Mariella Roxana Palomino

Chapter 13

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

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6:14-14265 Ricardo Pimentel and Maria Pimentel

Chapter 13

#7.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 7467 Eddy Ave, Riverside, CA 92509-3420

MOVANT: WELLS FARGO BANK NA

From: 5/9/17

EH _____

Docket 47

Tentative Ruling:

Tentative Ruling:

5/9/2017

Service is Proper
Opposition: Yes

Parties to advise Court regarding adequate protection discussions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ricardo Pimentel

Represented By
Tamar Terzian

Joint Debtor(s):

Maria Pimentel

Represented By
Tamar Terzian

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CONT... Ricardo Pimentel and Maria Pimentel

Chapter 13

Movant(s):

WELLS FARGO BANK, N. A.

Represented By
Dane W Exnowski
Melissa A Anderson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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10:00 AM

6:15-10926 Eduardo Nuno and Lilia Briseno

Chapter 13

#8.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1554 West 11th Street, San Bernardino, California 92411

MOVANT: DEUTSCHE BANK NATIONAL TRUST COMPANY

EH__

Docket 45

Tentative Ruling:

6/20/2017
Service: Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1). The Court is inclined to GRANT relief under ¶2, ¶3, and ¶12. Relief DENIED under ¶13 as moot. GRANT waiver of 4001(a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Eduardo Nuno

Represented By
James B Smith

Joint Debtor(s):

Lilia Briseno

Represented By
James B Smith

Movant(s):

Deutsche Bank National Trust

Represented By
Tyneia Merritt

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CONT... Eduardo Nuno and Lilia Briseno

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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10:00 AM

6:15-11540 Jesus Manuel Gomez and Maria Gomez

Chapter 13

#9.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 1443 S Idyllwild Ave, Bloomington, CA 92316

MOVANT: WELLS FARGO BANK, N.A.

From: 4/11/17, 5/9/17

EH__

Docket 56

*** VACATED *** REASON: ORDER ENTERED 5/31/17

Tentative Ruling:

04/11/17

Service: Proper

Opposition: Yes

Debtors have indicated that they intend to cure by the hearing or request an APO.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jesus Manuel Gomez

Represented By
Dana Travis

Joint Debtor(s):

Maria Gomez

Represented By
Dana Travis

Movant(s):

WELLS FARGO BANK, N. A.

Represented By
Dane W Exnowski

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CONT... Jesus Manuel Gomez and Maria Gomez

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:15-14339 Vincent K Jones

Chapter 13

#10.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 411 Surrey Circle, Corona, CA 92879

MOVANT: BEAL BANK

EH__

Docket 50

Tentative Ruling:

June 20, 2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay, relief under ¶3, and ¶6. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Vincent K Jones

Represented By
Dana Travis

Movant(s):

Beal Bank

Represented By
Mark S Krause

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-13375 Antoine Williams

Chapter 13

#11.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 15244 Hawk Street, Fontana, CA 92336

MOVANT: US BANK NATIONAL ASSOCIATION

From: 4/25/17

EH _____

Docket 46

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: Yes

While relief from stay appears warranted, parties to discuss adequate protection if
amounts in default are not fully cured by hearing.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Antoine Williams

Represented By
Gary Leibowitz

Movant(s):

U.S. Bank National Association, as

Represented By
Dane W Exnowski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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CONT... Antoine Williams

Chapter 13

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10:00 AM

6:16-15351 Juan Vaca Diaz

Chapter 7

#12.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 87350 62nd Ave, Thermal, California 92274

MOVANT: U.S. BANK NATIONAL ASSOCIATION

EH__

Docket 31

Tentative Ruling:

June 20, 2017

Service: Not Proper

Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay and ¶3.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Juan Vaca Diaz

Represented By
Edgar P Lombera

Movant(s):

U.S. Bank National Association

Represented By
Jenelle C Arnold

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
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6:16-16909 Edward Edmund Zozaya and Georgia Parrilla Zozaya

Chapter 13

#13.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 9617 Surrey Avenue, Montclair, California

MOVANT: WELLS FARGO BANK

From: 5/16/17

EH__

Docket 74

***** VACATED *** REASON: ORDER ENTERED 6/19/17**

Tentative Ruling:

05/16/2017
Service: Proper
Opposition: Yes

The Debtors assert they have made payments for the last three months but are aware they are otherwise behind on payments. Debtor indicates that he receives payments for jobs on completion and Debtors are requesting an APO to cure the remaining deficiency.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Edward Edmund Zozaya

Represented By
Dana Travis

Joint Debtor(s):

Georgia Parrilla Zozaya

Represented By
Dana Travis

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CONT... Edward Edmund Zozaya and Georgia Parrilla Zozaya

Chapter 13

Movant(s):

Wells Fargo BAnk, N.A.

Represented By
April Harriott
Sean C Ferry

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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10:00 AM

6:16-18546 Alexis I Barahona

Chapter 13

#14.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 17438 Taft Street, Riverside, CA 92508-9540

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 25

***** VACATED *** REASON: WITHDRAWAL OF MOTION BY
STIPULATION AND ORDER ENTERED 6/19/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alexis I Barahona

Represented By
Christopher J Langley

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Tavon Taylor
Judith Trigg-Hart
Megan E Lees

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:16-19962 Fonda Cormier

Chapter 13

#15.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 15632 Dobbs Peak Lane Fontana CA 92336

MOVANT: CREDITOR TRINITY FINANCIAL SERVICES

From: 5/30/17

EH__.

Docket 25

Tentative Ruling:

5/30/2017

Service is Improper
Opposition: None

The Court is inclined to CONTINUE the hearing for service on Debtor pursuant to Local Rule 4001-(1)(c)(C)(i).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Fonda Cormier

Represented By
Phillip Myer

Movant(s):

Trinity Financial Services LLC

Represented By
Henry D Paloci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-20036 Hector Manuel Chavez, Jr.

Chapter 13

#16.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 28211 Kane Court, Highland, CA 92346

MOVANT: PLANET HOME LENDING LLC ITS SUCCESSORS AND ASSIGNS

From: 4/25/17

EH__

Docket 24

*** VACATED *** REASON: CASE DISMISSED 5/12/17

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT relief from § 1301(a) co-debtor stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under ¶ 13 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Hector Manuel Chavez Jr.

Represented By
Matthew D Resnik

Movant(s):

Planet Home Lending, LLC

Represented By
Michelle R Ghidotti

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CONT... Hector Manuel Chavez, Jr.

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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10:00 AM

6:16-20056 Todd Christopher Tyrrell and Kelly Jean Tyrrell

Chapter 7

#17.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 15366 Cayuse Ct, Riverside, CA 92506

MOVANT: WELLS FARGO BANK NA

From: 5/9/17

EH _____

Docket 25

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/9/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Todd Christopher Tyrrell

Represented By
Matthew Abbasi

Joint Debtor(s):

Kelly Jean Tyrrell

Represented By
Matthew Abbasi

Movant(s):

WELLS FARGO BANK, N.A., AS

Represented By
Tyneia Merritt

Trustee(s):

Arturo Cisneros (TR)

Represented By
D Edward Hays

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:16-21234 Frank A Horzen and Barbara A Horzen

Chapter 13

#18.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 19579 Casmelia Street, Rialto, CA 92377

MOVANT: DEVELOPER'S CAPITAL INC

From: 5/9/17

EH__

Docket 34

Tentative Ruling:

5/9//2017

Service is Proper
Opposition: Yes

The Court is inclined to DENY the motion without prejudice. Movant's request for relief only requests relief under § 362(d)(2). Section 362(d)(2) requires Movant to show that the property is unnecessary to an effective reorganization and that Debtors have no equity in the property. This case is a Chapter 13 proceeding and the property at issue is Debtors' primary residence. In this situation, absent any indication to the contrary, the property is necessary to an effective reorganization. Furthermore, Movant does not identify the fair market value of the property or whether there are any additional liens on the property, and, therefore, has not demonstrated that Debtors have no equity in the property.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Frank A Horzen

Represented By
Paul Y Lee

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

CONT... Frank A Horzen and Barbara A Horzen

Chapter 13

Joint Debtor(s):

Barbara A Horzen

Represented By
Paul Y Lee

Movant(s):

Developers Capital, Inc., Employees

Represented By
Russel T Little

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-10980 Jose Liborio Avila

Chapter 13

#19.00 Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: THE SUBJECT BANKRUPTCY CASE.

MOVANT: FINLANDIA SAUNA PRODUCTS, INC.

EH__

Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Liborio Avila

Represented By
Christopher Hewitt

Movant(s):

FINLANDIA SAUNA PRODUCTS,

Represented By
Andrew Blackburn

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-11245 Bryan D. Chriss

Chapter 13

#20.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 5th Wheel

MOVANT: BANK OF THE WEST

Also #21

EH__

Docket 38

Tentative Ruling:

June 20, 2017

Service is Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1) based on post-petition failure to make payments. GRANT relief from the stay under § 362(d)(2) based on a lack of equity in the Property and Debtor's intention to surrender suggests the Property is not necessary for reorganization. Debtor's confirmed plan includes surrender of the Property. GRANT waiver of 4001(a)(3) stay and relief under ¶6.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Bryan D. Chriss

Represented By
Michael Smith

Movant(s):

BANK OF THE WEST

Represented By
Mary Ellmann Tang

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

CONT... Bryan D. Chriss

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-11245 Bryan D. Chriss

Chapter 13

#21.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: Boat

MOVANT: BANK OF THE WEST

Also #20

EH__

Docket 39

Tentative Ruling:

June 20, 2017

Service is Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1) based on post-petition failure to make payments. GRANT relief from the stay under § 362(d)(2) based on a lack of equity in the Property and Debtor's intention to surrender suggests the Property is not necessary for reorganization. Debtor's confirmed plan includes surrender of the Property. GRANT waiver of 4001(a)(3) stay and relief under ¶6.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Bryan D. Chriss

Represented By
Michael Smith

Movant(s):

BANK OF THE WEST

Represented By
Mary Ellmann Tang

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

CONT... Bryan D. Chriss

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-11538 Michael Ray Sandoval

Chapter 13

#22.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2006 TOYOTA CAMRY, VIN 4T1BF32K26U631692

MOVANT: CREDIT ACCEPTANCE CORPORATION

EH__

Docket 28

Tentative Ruling:

June 20, 2017
Service is Proper
Opposition: None

GRANT relief from stay based on non-opposition filed by Debtor on June 12, 2017. Grant waiver of 4001(a)(3) stay and relief under ¶6. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Michael Ray Sandoval

Represented By
Michael E Clark
Barry E Borowitz

Movant(s):

Credit Acceptance Corporation

Represented By
Sheryl K Ith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

CONT... Michael Ray Sandoval

Chapter 13

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-11752 Christopher Wilkins

Chapter 7

#23.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 5435 Robinwood Road, Bonita, California 91902

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 32

Tentative Ruling:

06/20/2017
Service: Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(4). Court finds that bankruptcy case was part of scheme to hinder, delay and defraud creditors based on the unauthorized transfer of interest in the Property without Movant's approval. The Court finds bad faith as to the Debtor noting that this is the fourth relief from stay granted in this case involving an unauthorized transfer. GRANT relief under ¶2 and ¶3. GRANT waiver of 4001(a)(3) stay. GRANT relief under ¶10a but only upon recording of a copy of this order and giving appropriate notice of its entry in compliance with applicable nonbankruptcy law. DENY relief under ¶4 due to lack of cause.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Christopher Wilkins

Pro Se

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Jason C Kolbe
Jenelle C Arnold

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

CONT... Christopher Wilkins

Chapter 7

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-12411 Maria I Alcaraz and Eduardo D Alcaraz

Chapter 13

#24.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 NISSAN SENTRA, VIN # 3N1AB7AP0FY296044

MOVANT: REGIONAL ACCEPTANCE CORPORATION

EH__

Docket 22

Tentative Ruling:

June 20, 2017

Service is Proper

Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). There is no equity in the Property and Debtor's intention to surrender suggests the Property is not necessary for reorganization. Debtor's confirmed plan included surrender of the Property. GRANT waiver of 4001(a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Maria I Alcaraz

Represented By
Manfred Schroer

Joint Debtor(s):

Eduardo D Alcaraz

Represented By
Manfred Schroer

Movant(s):

REGIONAL ACCEPTANCE

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

CONT... Maria I Alcaraz and Eduardo D Alcaraz

Chapter 13

Michael D Vanlochem

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-12428 Jessica Pilar Solis

Chapter 7

#25.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2016 NISSAN MAXIMA, VIN #
1N4AA6AP2GC420700

MOVANT: NISSAN MOTOR ACCEPTANCE CORPORATION

EH__

Docket 9

Tentative Ruling:

June 20, 2017

Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001
(a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing,
the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Jessica Pilar Solis

Represented By
Yolanda Flores-Burt

Movant(s):

NISSAN MOTOR ACCEPTANCE

Represented By
Michael D Vanlochem

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-12441 Allison Lyn Emray

Chapter 7

#26.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2009 NISSAN MURANO-V6, VIN JN8AZ18U99W011651

MOVANT: WELLS FARGO BANK N.A.

EH__

Docket 11

Tentative Ruling:

06/20/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) based on inadequate equity cushion of 14.14%. GRANT relief under ¶2. GRANT waiver of 4001(a)(3) stay. DENY relief from stay under §362(d)(2) due to lack of cause shown. DENY relief under ¶13 as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Allison Lyn Emray

Represented By
D Justin Harelik

Movant(s):

Wells Fargo Bank, N.A., dba Wells

Represented By
Sheryl K Ith

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-12886 Ryan Keith Richardson and Joyce Nanette Richardson

Chapter 7

#27.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11666 Oak Knoll Court, Fontana, CA

MOVANT: U.S. BANK, NA AS LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST

EH__

Docket 23

Tentative Ruling:

June 20, 2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Ryan Keith Richardson

Represented By
Ronald B Talkov

Joint Debtor(s):

Joyce Nanette Richardson

Represented By
Ronald B Talkov

Movant(s):

U.S. BANK, NA AS LEGAL TITLE

Represented By
Diane Weifenbach

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

CONT... Ryan Keith Richardson and Joyce Nanette Richardson

Chapter 7

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-13072 Ricardo Menendez

Chapter 13

#28.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 245 S Iris St., San Bernardino California 92410-2270

MOVANT: WELLS FARGO BANK

From: 5/30/17

EH__

Docket 18

Tentative Ruling:

5/30/2017

Service is Proper
Opposition: None

While cause arguably exists to lift the stay, Movant to discuss the status of this motion given that Movant withdrew its bad faith objection to confirmation at Debtor's confirmation hearing on May 18, 2017.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ricardo Menendez

Represented By
Sunita N Sood

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Dane W Exnowski

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

CONT... Ricardo Menendez

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-13483 Ricardo Enciso and Sonia Gamez

Chapter 7

#29.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2012 HONDA CIVIC-4 CYL, VIN 19XFB2F58CE371230

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 9

Tentative Ruling:

June 20, 2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Ricardo Enciso

Represented By
Speros P Maniates

Joint Debtor(s):

Sonia Gamez

Represented By
Speros P Maniates

Movant(s):

Wells Fargo Bank, N.A., dba Wells

Represented By
Sheryl K Ith

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

CONT... Ricardo Enciso and Sonia Gamez

Chapter 7

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-13917 Teresa A Salvail and Michael D Salvail

Chapter 13

#30.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 2521 Moosedeer Dr Ontario, CA 91761

MOVANT: UNITED CATHOLICS FEDERAL CREDIT UNION

EH__

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa A Salvail

Represented By
Julie J Villalobos

Joint Debtor(s):

Michael D Salvail

Represented By
Julie J Villalobos

Movant(s):

United Catholics Federal Credit

Represented By
Alana B Anaya

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-14303 Benjamin John Ramos

Chapter 13

#31.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 37078 Amateur Way, Beaumont, CA 92223

MOVANT: BENJAMIN J. RAMOS

EH__

Docket 11

Tentative Ruling:

06/20/2017

The Debtor has provided sufficient evidence that there has been a significant change in circumstances since the prior filing. The reduction in number of dependents is sufficient to overcome the presumption of bad faith. Based on the foregoing, the Court is inclined to GRANT the Motion in its entirety, continuing the stay as to all creditors.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Benjamin John Ramos

Represented By
John F Brady

Movant(s):

Benjamin John Ramos

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-14307 Elmer Arnold Tompkins

Chapter 13

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

MOVANT: ELMER TOMPKINS

EH__

Docket 14

Tentative Ruling:

June 20, 2017

Debtor's prior case was dismissed for failure to make payments subject to the confirmed Chapter 13 plan. Debtor claims that due to attorney negligence, he was unable to follow through on his payment plan. Debtor defaulted immediately after the plan was confirmed and the case was dismissed on April 3, 2017. Debtor testifies that he tried to make the payments and payment was rejected on two occasions. However, Debtor fails to provide any corroborating documentary evidence.

Moreover, Movant has failed to serve Senior Lienholder, Shellpoint Mortgage Servicing, pursuant to FRBP 7004.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Elmer Arnold Tompkins

Represented By
Scott Kosner

Movant(s):

Elmer Arnold Tompkins

Represented By
Scott Kosner

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

CONT... Elmer Arnold Tompkins

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-14401 Tracy R. Franco

Chapter 13

#33.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Real Property

MOVANT: TRACY R. FRANCO

EH__

Docket 14

Tentative Ruling:

06/20/2017

The Debtor's prior case was voluntarily dismissed. The Debtor's declaration indicates that prior counsel made mistakes and failed to provide materials to the trustee. In the instant case, the Debtor has retained new counsel and has provided her I and J, proposed plan, and evidence of family contributions to make the plan feasible. The feasibility issue will be further evaluated at the hearing on confirmation. However, the Debtor has provided sufficient evidence of good faith to warrant granting of the Motion.

Based on the foregoing, the Motion is granted. The stay is continued as to all creditors.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Tracy R. Franco

Represented By
Michael Smith

Movant(s):

Tracy R. Franco

Represented By
Michael Smith

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

CONT... Tracy R. Franco

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

6:17-14408 Norma A Rodriguez

Chapter 7

#34.00 Motion for relief from the automatic stay with supporting declarations
UNLAWFUL DETAINER RE: 2231 PRESCOTT CIR, CORONA, CA 92881

MOVANT: KMC INVESTMENT CORP

EH__

Docket 5

Tentative Ruling:

06/20/2017

Service: Proper

Opposition: No

GRANT relief under § 362(d)(1) based on the following: (1) original trustee's perfected deed of sale from pre-petition foreclosure sale, (2) Movant's perfected grant deed acquired from original trustee pre-petition, and (3) Movant's subsequent pre-petition unlawful detainer judgment and writ of possession, which establish Movant's colorable claim to the Property. Further, because Debtor had no interest in the Property pre-petition, Cause under § 362(d)(1) is established. Bebensee-Wong v. Fed. Nat'l Mortgage Ass'n (In Re Bebensee-Wong), 248 B.R. 820, 822-23 (9th Cir. BAP 2000). The Court is also inclined to GRANT relief under § 362(d)(2) because according to the unlawful detainer judgment, Debtor no longer owns the Property, and as such, Debtor has no equity in the property, and the property is not necessary for an effective reorganization. GRANT relief under ¶2. GRANT waiver of 4001(a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Norma A Rodriguez

Pro Se

Movant(s):

KMC Investment Corp.

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

10:00 AM

CONT... Norma A Rodriguez

Barry L O'Connor

Chapter 7

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

2:00 PM

6:16-14140 Welch Management Corporation

Chapter 11

#35.00 Motion By United States Trustee To Dismiss Or Convert Chapter 11 Case

EH__

Docket 169

Tentative Ruling:

6/20/17

BACKGROUND

On May 9, 2016, Debtor filed a Chapter 11 voluntary petition. Debtor operates nine Fantastic Sam's hair salons.

On May 10, 2017, UST filed a motion to dismiss the Chapter 11 case for failure to pay the first quarter Chapter 11 fees of \$4,875, which were delinquent as of May 1, 2017. On June 6, 2017, US Rep Retail I, LLC, filed a response supporting dismissal.

DISCUSSION

11 U.S.C. § 1112(b) provides that a case may be dismissed or converted for cause. Section 1112(b)(4) enumerates certain examples of cause, including "failure to pay any fees or charges required under chapter 123 of title 28." 28 USC § 1930(a)(6) imposed the statutory fees for Chapter 11 cases. Therefore, cause exists to convert the case.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

2:00 PM

CONT... Welch Management Corporation

Chapter 11

Once the Court determines cause for dismissal is present, the Court must determine whether conversion or dismissal is in the best interests of the creditors and the estate. *See, e.g., In re AVI, Inc.*, 389 B.R. 721, 729 (B.A.P. 9th Cir. 2008). According to UST, Debtor's secured debt exceeds the value of its assets, and, therefore, there would likely not be any meaningful distribution to creditors if the case were converted to Chapter 7. Additionally, the most active creditor in the case has requested that the case be dismissed.

Furthermore, the Court deems failure to oppose to be consent to the relief requested pursuant to Local Rule 9013-(1)(h).

TENTATIVE RULING

The Court is inclined to GRANT the motion and DISMISS the case.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Welch Management Corporation

Represented By
Stephen R Wade
W. Derek May

Movant(s):

United States Trustee (RS)

Represented By
Abram Feuerstein esq
Everett L Green

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

2:00 PM

6:16-19993 B & B Family, Incorporated

Chapter 11

#36.00 CONT Approval of Disclosure Statement

From: 5/16/17

EH _____

Docket 89

***** VACATED *** REASON: CONTINUED TO 7/25/17 AT 2:00 P.M.**

Tentative Ruling:

5/16/17

Background

On November 10, 2016 ("Petition Date"), B & B Family, Incorporated ("Debtor") filed a Chapter 11 voluntary petition. The Debtor is owned by Patricia Forte (who owns 50% of shares) and by Randall and Marianne Richey, husband and wife, who own the remaining 50% of shares in the Debtor (collectively, "Shareholders")

Debtor operates Oggi's Pizza and Brewing Company in Apple Valley, California. Debtor has fifty-five employees. The Debtor's Schedules show that it had approximately \$114,662.50 in assets as of the Petition Date. The Debtor's assets consist primarily of leased equipment, business licenses, and liquid assets in the form of cash and accounts.

On March 31, 2017, Debtor filed its Disclosure Statement and Chapter 11 Plan of Reorganization. On May 2, 2017, Comerica Bank filed a Limited Response to the Debtor's Disclosure Statement pointing simply to the Debtor's omission of its franchise agreement as an executory contract being assumed. In response, the Debtor amended its Disclosure Statement and Plan on May 2, 2017 (the "Amended DS and Plan"). Additionally, on May 3, 2017, the Debtor filed redline versions of the Amended DS and Plan reflecting the changes made since the March 31, 2017, filings.

Disclosure Statement & Plan

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 20, 2017

Hearing Room 303

2:00 PM

CONT... B & B Family, Incorporated

Chapter 11

I. BASIC TERMS OF PLAN

The Chapter 11 Plan's proposed effective date is the first day of the first full month after entry of the final order confirming plan (but no earlier than 8/01/17). Classes of claims are categorized as follows:

A. Claims Classification

1) *Administrative Claims:*

- UST Fees - \$4,875 (estimated), in full on effective date
- Turoci Firm - \$40,000 (estimated)/Terms: in full on effective date

2) *Priority Tax Claims:*

- IRS: \$5,251.48/ Terms: in full on effective date
- California BOE: \$125,750.40/Terms: 48 months, 7% interest, \$3,011.25/ mo.

3) *Class 1: Comerica Bank (Impaired)*

- Nature of lien: *first* priority security interest in all of Debtor's assets (D values at \$150,000)
- Claim: \$494,123.90
- Treatment: Bifurcated claim – Secured claim of \$150,000, Unsecured Claim of \$344,123.90
- Secured Claim Terms: 60 months, 6% interest, \$2,899.92/mo.
- Unsecured Claim treated with Class 6 GUCs

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CONT...

B & B Family, Incorporated

Chapter 11

4) Class 2: FC Marketplace aka Pioneer Park (Impaired)

- Nature of lien: *second* priority security interest in all Debtor's assets
- Unsecured claim of \$88,963.76
- Treatment: treated with Class 6 GUCs
- Plan proposes to avoid the lien of FC Marketplace on entry of confirmation order

5) Class 3: Oggi's Corporate (Impaired)

- Nature of lien: *third* priority lien in all Debtor's assets
- Unsecured claim of \$54,106.12
- Treatment: paid with Class 6 GUCs
- Plan proposes to avoid the lien of FC Marketplace on entry of confirmation order

6) Class 4: Financial Pacific Leasing

- Secured as to leased restaurant equipment which D values at \$2,000
- Secured Claim of \$2,000, Treatment: Paid in full on effective date (unimpaired)
- Unsecured Claim of \$42,864.40 (paid with class 6 GUCs) (impaired)
- Plan proposes to avoid the lien of FC Marketplace on entry of confirmation order

7) Class 5: High Desert Prime, LP (Impaired)

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- Landlord
- Debtor is assuming the lease and proposes to cure the arrears owed to landlord
- Claim: \$178,499.98
- Treatment: 48 months, 0% interest (per agreement with HDP), \$3,718.75/mo.

8) *Class 6: General Unsecured Creditors (Impaired)*

- Total Claims: \$636,718.69
- Dividend: 17% or \$120,000
- Treatment: \$1,000/mo. for first 48 months and \$6,000 for months 48-60
- Note: Pawnee lease for bar stools, dishwasher etc., will be rejected and Pawnee filed an unsecured claim and will be treated as such.

9) *Insiders/Equity Holders*

- No Insider Claims
- Equity to retain stock subject to Section VII (which provides potentially for new value although, if necessary)

B. Plan Funding

Debtor indicates it will have \$60,000 cash on hand on date of confirmation hearing (which Court presumes to mean the Effective Date).

Disposable income projection is \$11,000 for five years

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C. Management

Patricia Forte (50% owner) is current President and will step down as President

Randall Richey will remain Secretary

Marianne Richey, current CFO will become President and CFO

D. Other Terms

D will be disbursing agent with no compensation unclaimed distributions to revert to reorganized Debtor.

Legal Analysis

A. Adequate Information

A Chapter 11 disclosure statement is required to contain "adequate information" pursuant to 11 U.S.C. § 1125(b). Section 1125(f)(2) provides that: "the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28." The United States Courts have devised a disclosure statement template for small businesses, Form B25B, which Debtor generally adopted as to format.

As to the substance of a disclosure statement, 11 U.S.C. § 1125(a)(1) defines "adequate information" 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, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an

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informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information

The type of information required varies with the circumstances. *See, e.g., In re Jeppson*, 66 B.R. 269, 292 (Bankr. D. Utah 1986) (listing nineteen categories of information commonly required); *see also In re Malek*, 35 B.R. 443, 443-44 (Bankr. E.D. Mich. 1983) (listing minimum requirements).

B. Plan Feasibility

"There are numerous decisions which hold that where a plan is on its face nonconfirmable, as a matter of law, it is appropriate for the court to deny approval of the disclosure statement describing the nonconfirmable plan." *In re Silberkraus*, 253 B.R. 890, 899 (Bankr. C.D. Cal. 2000) (collecting cases).

Here, the Debtor asserts that it needs a total of \$10,630 on a monthly basis to make plan payments and projects that after ordinary course expenses, it has a disposable income of approximately \$11,000 with which to make those payments.

ISSUES TO BE ADDRESSED AT HEARING ON APPROVAL OF DISCLOSURE STATEMENT

The Court has examined the Debtor's Amended DS and Plan to determine whether "adequate information has been provided and has identified the following issues to be addressed:

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Minor Issues

- Page 6:9-15, reference to "Docket No. 88" should be changed to reference "Docket No. 98"
- In the Plan, where the Debtor describes Oggi's Corporate Debt, there appears to be a discrepancy regarding Oggi's Corporate's claim (i.e. **\$54,106.12** is the "balance owed" but the Debtor in the next sentence proposes a **\$88,963.76** allowed claim for this creditor)
- Patricia Forte is alternately referred to as "CEO" or as "President" in the DS and Plan. The Debtor should use terms consistently to avoid confusion.

Larger Issues (to be addressed at the hearing)

- The DS and Plan contemplate bifurcation of Comerica and FPL's claims and avoidance of remaining junior liens. However, the Docket does not reflect that any Motion to Value has yet been filed to determine the value of the collateral and notice to juniorlienholders that Debtor intends to avoid their liens on confirmation.
- There is currently no proposal for new value. Therefore, if Class 6 does not accept the plan, the Plan cannot be confirmed with Shareholders retaining any interest in the reorganized Debtor.
- Part 10, the Effect of Confirmation of Plan should clearly identify the lienholders whose liens shall be extinguished on confirmation of the Debtor's Plan.
- Part 9 is very lean on details regarding potential tax consequences on feasibility. Specifically, as to how Debtor determined the impact on feasibility, whether an accountant was consulted or otherwise how the Debtor is qualified to make a representation regarding the potential tax impact. Additionally, a question exists of the margin of potential increased tax liability.

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- There is no evidence of the historical data referenced by Marianne Richey which is referenced in the DS declaration by which she estimated the projected figures.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

B & B Family, Incorporated

Represented By
Todd L Turoci

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6:17-13853 Malik Muhammad Asif and Zobia Asif

Chapter 11

#37.00 CONT Motion for Order Authorizing Interim Use of Cash Collateral

From: 5/18/17

Also #38 & #39

EH__

Docket 13

Tentative Ruling:

6/20/17

BACKGROUND

On May 8, 2017, Malik & Zobia Asif ("Debtors") filed a Chapter 11 voluntary petition. A case management conference was scheduled for June 20, 2017. Debtors own several Baja Fresh restaurants in southern California and Nevada. Prior to filing this Chapter 11 case, Debtors dissolved the corporations and limited liability companies that operated the Baja Fresh locations, and assumed all the assets and liabilities.

On May 15, 2017, Debtors filed a motion for order authorizing interim use of cash collateral. On May 24, 2017, the motion was granted on an interim basis, and the matter was continued to June 20, 2017. On June 6, 2017, Debtors' franchisors, Fresh Enterprises, LLC and Triune, LLC (collectively, "Franchisor") filed an objection to the motion for cash collateral.

DISCUSSION

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CONT... Malik Muhammad Asif and Zobia Asif

Chapter 11

11 U.S.C. § 363(a) defines cash collateral as:

cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

11 U.S.C. § 363(c)(1)-(3) (2010) states:

(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless-

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

(3) Any hearing under paragraph (2)(B) of this subsection may be a

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preliminary hearing or may be consolidated with a hearing under section (e) of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(b) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.

Moving on, the Court notes that Debtors have failed to comply with Fed. R. Bankr. P. Rule 4001(b) by failing to provide the required summary sheet. Debtors list the following "cash collateral assets": (1) security deposits with landlord (\$41,541.40); (2) food and other inventory (\$15,000); (3) checking accounts (\$625); (4) cash (\$500). Presumably, Debtors do not intend to use the security deposits.

Creditor offers a variety of assertions in support of its objection to the use of cash collateral: (1) the majority of the franchise agreements terminated pre-petition, and the remainder of the franchise agreements terminated post-petition on the basis of a termination notice sent pre-petition; (2) the franchise agreements contained an anti-alienation clause and, therefore, Debtors pre-petition transfers of the agreement to themselves individually are null and void; (3) Debtors have been reckless in the operation of the Baja Fresh locations and have failed multiple quality assurance tests post-petition; (4) at the meeting of creditors, Debtors admitted that their budget forecasts were optimistic and included rent reductions.

Debtors have not replied to Franchisor's objection. On May 24, 2017, this Court entered an order authorizing the use of cash collateral pursuant to a proposed budget. Franchisor's objection places the credibility, and future viability, of that proposed budget in serious doubt. Given the concerns raised by Franchisor, it does not appear that replacement liens, in and of themselves, constitute adequate protection.

Party Information

Debtor(s):

Malik Muhammad Asif

Represented By
Todd L Turoci

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CONT... Malik Muhammad Asif and Zobia Asif

Chapter 11

Joint Debtor(s):

Zobia Asif

Represented By
Todd L Turoci

Movant(s):

Zobia Asif

Represented By
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci

Malik Muhammad Asif

Represented By
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci

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6:17-13853 Malik Muhammad Asif and Zobia Asif

Chapter 11

#38.00 Motion to Use Cash Collateral Motion for Order Authorizing Use of Cash Collateral from May 9, 2017 through May 17, 2017 Nunc Pro Tunc

Also #37 & #39

EH__

Docket 42

Tentative Ruling:

6/20/17

BACKGROUND

On May 8, 2017, Malik & Zobia Asif ("Debtors") filed a Chapter 11 voluntary petition. A case management conference was scheduled for June 20, 2017. Debtors own several Baja Fresh restaurants in southern California and Nevada. Prior to filing this Chapter 11 case, Debtors dissolved the corporations and limited liability companies that operated the Baja Fresh locations, and assumed all the assets and liabilities.

On May 15, 2017, Debtors filed a motion for order authorizing interim use of cash collateral. On May 24, 2017, the Court granted the motion on an interim basis and continued the matter to June 20, 2017. On May 30, 2017, Debtors filed a new motion to use cash collateral. This separate motion was filed to request retroactive approval of Debtors' use of cash collateral between May 9 and May 17. On June 6, 2017, Debtors' franchisors, Fresh Enterprises, LLC and Triune, LLC (collectively, "Franchisor") filed an objection to the motion for cash collateral.

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CONT... Malik Muhammad Asif and Zobia Asif

Chapter 11

DISCUSSION

Use of cash collateral on an interim basis was approved on May 24, 2017. Debtors' prospective use of cash collateral is addressed in the tentative related to that matter.

During the first nine days after the filing of the petition, Debtors spent \$77,887.90. Debtors assign the expenses to three categories: (1) necessary expenses for the continued operation of their business; (2) checks that were posted pre-petition, but cleared post-petition; and (3) necessary living expenses. Debtors request *nunc pro tunc* approval pursuant to § 105(a).

The Court has broad equitable discretionary power to approve a cash collateral motion *nunc pro tunc* and its decision is reviewed for abuse of discretion. *See, e.g., Matter of Briscoe Enters., Ltd., II*, 994 F.2d 1160, 1169-1170 (5th Cir. 1993). To the extent that the expenditures for which *nunc pro tunc* approval is sought are of the nature and amount (pro rata) as were approved for this Court's order granting interim use of cash collateral, the Court approves their use *nunc pro tunc*. Nevertheless, the Court warns Debtors that unauthorized use of cash collateral can constitute grounds for dismissal or conversion of the case. *See, e.g., In re Visicon S'holders Trust*, 478 B.R. 292, 312 (Bankr. S.D. Ohio 2012).

A further issue is implicated, however, by Debtors use of cash collateral for personal expenses. The Court's interim cash collateral motion states: "no insiders can receive compensation until after the appropriate timelines for served and filed Notices Setting Insider Compensation." The notices setting insider compensation were filed on May 19, 2017, and include a fifteen day objection period, meaning that insiders were precluded from receiving compensation before June 3, 2017. Compensation received before June 3, 2017, violates both the payment to insiders rule and the Court's cash collateral order.

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CONT... Malik Muhammad Asif and Zobia Asif

Chapter 11

While Debtors' and their children may not have been paid a salary before June 3, 2017, they directly paid for their living expenses using cash collateral before that date. In accordance with the notices setting insider compensation and this Court's order granting interim use of cash collateral, such expenditures were prohibited and *nunc pro tunc* authorization is not granted.

Furthermore, the Court notes the following additional problems:

- (1) Debtors' exhibit 48 lists four bank accounts, including two DIP accounts. Neither of the two non-DIP accounts were disclosed on Debtors' schedules.
- (2) Debtors should have provided real bank statements, instead of the informal drafted excel sheet. Payroll is unorganized, includes individuals being paid twice on the same days, individuals with no last name, individuals with no first name, and individuals with names that make no sense.
- (3) Debtors appear to have withdrawn approximately \$5,500 in cash, allegedly for business purposes.
- (4) Debtors appear to have made payments toward prepetition debts, possibly giving rise to avoidable preferences.
- (5) Debtors paid approximately \$3,500 in credit card fees. It is unclear what these fees are for and why there are so many distinct entries.
- (6) Debtors have a list of Bank of America bank fees for \$35 all within a few days of each other. It is unclear why there are so many. Debtors have 1-3 Bank of America accounts that have been explicitly or implicitly revealed.

As noted by Franchisor, it is difficult to determine the extent to which the listed expenditures were for personal use, and the extent to which the expenditures were for business operations.

Party Information

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CONT... Malik Muhammad Asif and Zobia Asif

Chapter 11

Debtor(s):

Malik Muhammad Asif

Represented By
Todd L Turoci

Joint Debtor(s):

Zobia Asif

Represented By
Todd L Turoci

Movant(s):

Zobia Asif

Represented By
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci

Malik Muhammad Asif

Represented By
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci

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6:17-13853 Malik Muhammad Asif and Zobia Asif

Chapter 11

#39.00 Order (1) Setting Scheduling Hearing And Case Management Conference And
(2) Requiring Status Report

Also #37 & #38

EH__

Docket 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Malik Muhammad Asif

Represented By
Todd L Turoci

Joint Debtor(s):

Zobia Asif

Represented By
Todd L Turoci

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3:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01279 Allied Injury Management, Inc. v. One Stop Multi-Specialty Medical Group

#40.00 Motion To Quash Subpoena To Produce Documents, Information Or Objects Issued By One Stop Multi-Specialty Medical, And For Protective Order; Request For Monetary Sanctions For Costs Incurred

EH__

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Nor Cal Pain Management Medical

Represented By
Maria K Pum
Maria C Armenta

One Stop Multi-Specialty Medical

Represented By
Maria K Pum
Maria C Armenta

One Stop Multi-Specialty Medical

Represented By
Maria K Pum
Maria C Armenta

Movant(s):

Floyd Skeren & Kelly, LLP

Represented By
Leslie A Cohen

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CONT... Allied Injury Management, Inc.

Chapter 11

Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

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11:00 AM

6:13-22710 Jesus M. Tapia

Chapter 7

Adv#: 6:16-01265 Whitmore (TR) v. Davol, Inc. et al

#1.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01265. Complaint by Jesus Tapia against Davol, Inc., Bard Devices, Inc., C.R. Bard, Inc..
(Holding date)

From: 1/4/17, 2/1/17, 3/1/17, 4/12/17, 6/7/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 7/12/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus M. Tapia

Represented By
Michael Smith

Defendant(s):

C.R. Bard, Inc.

Represented By
Christopher O Rivas

Bard Devices, Inc.

Represented By
Christopher O Rivas

Davol, Inc.

Represented By
Christopher O Rivas

Plaintiff(s):

Robert Whitmore (TR)

Represented By
Troy A Brenes

Trustee(s):

Robert Whitmore (TR)

Represented By

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CONT...

Jesus M. Tapia

Douglas A Plazak
Troy A Brenes

Chapter 7

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11:00 AM

6:09-35625 Pamela J. Carmichael

Chapter 7

#2.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 76

Tentative Ruling:

06/21/2017

No opposition has been filed.

Service was Proper.

The applications for compensation of the Trustee and Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the Applications of the associated professionals, the following administrative claims will be allowed:

Trustee Fees: \$ 6,189.95

Trustee Expenses: \$ 78.82

Accountant Fees: \$2,472

Accountant Costs: \$107.90

APPEARANCES WAIVED. The applications for compensation are approved and the trustee and associated professionals may submit on the tentative.

Party Information

Debtor(s):

Pamela J. Carmichael

Represented By
Jenny L Doling

Trustee(s):

Helen R. Frazer (TR)

Pro Se

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6:15-15514 Manuel Jose Saldana

Chapter 7

#3.00 CONT Motion to disallow Claimed Homestead Exemption

From: 3/1/17, 4/26/17

EH__

Docket 55

***** VACATED *** REASON: CONTINUED TO 8/16/17 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Jose Saldana

Represented By
Robert G Uriarte

Trustee(s):

Lynda T. Bui (TR)

Represented By
Leonard M Shulman
Elyza P Eshaghi
Rika Kido

**United States Bankruptcy Court
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Hearing Room 303

11:00 AM

6:15-20280 Kai Lin Wu

Chapter 7

#4.00 OSC why Frank Osekowsky and Frank's Paralegal Services should not be held in contempt of court pursuant to 11 U.S.C. §105 and Federal Rule of Bankruptcy Procedure 9020

EH__

Docket 72

Tentative Ruling:

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Kai Lin Wu

Represented By
Paul Y Lee

Trustee(s):

John P Pringle (TR)

Represented By
Wesley H Avery

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Hearing Room 303

11:00 AM

6:16-17802 Armon Randolph Sharp

Chapter 7

#5.00 CONT Motion for Turnover of Property

From: 3/1/17, 3/22/17

Also #6 & #7

EH__

Docket 27

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/6/17**

Tentative Ruling:

3/22/17

APPEARANCES REQUIRED.

03/01/2017

BACKGROUND

On August 30, 2016, Armon Randolph Sharp ("Debtor") filed his petition for chapter 7 relief. Arturo Cisneros is the duly appointed chapter 7 trustee ("Trustee").

On February 3, 2017, the Debtor filed a motion for turnover of \$15,000 in cash and of a mobile home, both of which the Trustee asserts were received by the Debtor prepetition and were not scheduled ("Motion"). On February 15, 2017, the Debtor filed his opposition to the Motion ("Opposition"). On February 22, 2017, the Trustee filed his reply ("Reply").

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CONT... Armon Randolph Sharp

Chapter 7

DISCUSSION

According to § 542(a), an entity shall deliver to the Trustee the property of the estate in its possession, custody or control unless the property is of inconsequential value to the estate. 11 U.S.C. § 542(a).

TENTATIVE RULING

The primary relief requested by the Motion is that the Debtor turnover certain property obtained prepetition, consisting of cash and a mobile home. In opposition, the Debtor asserts that the original schedules contained errors and that he has since amended his schedules to claim an exemption in the mobile home. On February 22, 2017, the Trustee filed objection to the Debtor's homestead exemption. Due to the interrelated nature of the instant motion for turnover and the objection to the Debtor's exemption, the instant hearing shall be CONTINUED to March 22, 2017, at 11:00 a.m., to be heard concurrently with the hearing on the objection to the Debtor's homestead exemption.

APPEARANCES WAIVED. Movant to give notice of the continuance.

Party Information

Debtor(s):

Armon Randolph Sharp

Represented By
Daniel King
Raymond W Stockstill

Movant(s):

Arturo Cisneros (TR)

Represented By
Toan B Chung

Trustee(s):

Arturo Cisneros (TR)

Represented By

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CONT... Armon Randolph Sharp

Toan B Chung

Chapter 7

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11:00 AM

6:16-17802 Armon Randolph Sharp

Chapter 7

#6.00 CONT Motion by Chapter 7 Trustee's Objecting to Debtor's Amended Homestead Exemption on Previously Undisclosed Real Property

From: 3/22/17

Also #5 & #7

EH__

Docket 34

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/5/17**

Tentative Ruling:

3/22/17

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Armon Randolph Sharp

Represented By
Daniel King
Raymond W Stockstill

Movant(s):

Arturo Cisneros (TR)

Represented By
Toan B Chung

Trustee(s):

Arturo Cisneros (TR)

Represented By
Toan B Chung

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11:00 AM

6:16-17802 Armon Randolph Sharp

Chapter 7

#7.00 Show Cause Hearing why Debtor's Counsel should not be Sanctioned and/or Ordered to Disgorge Fees

Also #5 & #6

EH__

Docket 1

Tentative Ruling:

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Armon Randolph Sharp

Represented By
Daniel King
Raymond W Stockstill

Trustee(s):

Arturo Cisneros (TR)

Represented By
Toan B Chung

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Central District of California
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Courtroom 303 Calendar**

Wednesday, June 21, 2017

Hearing Room 303

11:00 AM

6:15-19998 Jack C Pryor

Chapter 7

#8.00 Motion for Relief From Two Orders. Motion to set aside Pursuant to BR 9024 and FRCP Rule 60

Also #9

EH__

Docket 266

Tentative Ruling:

06/21/2017

BACKGROUND

On October 13, 2015 ("Petition Date"), Jack Pryor ("Debtor") filed a chapter 11 petition. On February 25, 2016, the Court entered an order ("Conversion Order") converting Debtor's case to a chapter 7. Karl Anderson ("Trustee") is the duly appointed chapter 7 trustee.

Debtor's Amended Schedule A listed an interest in real property located at 19024 Ruppert Street, Palm Springs, CA (the "Property"). Debtor's Amended Schedule B listed various assets/businesses, including but not limited to: (1) Diversified Product Industries, Inc. ("DPI"); (2) Access Solar, Inc. ("Access"); and (3) Cabazon Development Corp ("CBC") (collectively the "Companies").

On September 14, 2016, the Trustee filed a Motion for Turnover (the "Turnover Motion") which asserted the following facts:

1. That Trustee requested that Richard Halderman ("Broker") evaluate the Property. [Turnover Motion at Broker Dec. ¶ 3];
2. On or about March 1, 2016, the Broker inspected the property and he asked the Debtor about the large and unusual electric panels affixed to the interior of the building in one of the open storage spaces. [Id.].
3. Debtor informed the Broker that the Property had roof mounted solar panels. [Id.].
4. Debtor provided the Broker with a November 2014 appraisal of the Property, which "indicates that the Property has 96 solar panels on the roof which cost

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about \$156,000.00 in 2012." [Id. ¶ 4].

5. Broker spoke to the Debtor in June 2016, and Debtor informed the Broker that the solar panels had been removed from the roof. [Id. ¶ 5].
6. Broker alleges that the removal of the solar panels from the Property will significantly decrease its value by at least \$100,000.00. [Id. ¶ 6].

On October 19, 2016, the Court granted the Turnover Motion and specifically ordered the Debtor to turnover "the solar panels which appeared on the real property located at 19024 Ruppert Street, Palm Springs in approximately May 2016" within 30 days of entry of the order granting the Turnover Motion (the "Turnover Order"). The Debtor having failed to comply with the Turnover Order, the Trustee filed a Motion for Order to Show Cause re Contempt (the "First OSC Motion") on December 6, 2016. On January 12, 2017, the Court issued an order holding the Debtor in civil contempt for violation of the Turnover Order, ordering sanctions of \$3,000, and again ordering turnover of the Solar Panels ("First OSC").

On April 11, 2017, the Trustee filed his Motion and Motion for OSC why the Debtor should not be held in further contempt and bodily detained until such time as he complies with the Court orders (the "Second OSC Motion"). The Debtor opposed the Second OSC Motion generally on the bases that: (1) he did not own the solar panels and that they were property of Access; (2) Access had already transferred the solar panels and it was thus impossible for him to comply with the Turnover Order and related OSCs; and (3) the Debtor is not a sophisticated party and did not believe he was doing anything wrong when he (as principal of Access) removed and transferred the solar panels.

On May 22, 2017, the Court issued an OSC for the Debtor to show cause why he should not be held in further contempt and bodily detained until such time as he complies with court orders ("Second OSC").

On May 30, 2017, the Debtor filed a Motion seeking relief from the Turnover Order and First OSC (the "Motion") pursuant to FRBP 9024 (incorporating FRCP 60). The Motion was opposed by the Office of the United States Trustee and, separately, by the Trustee (the "Oppositions"). On June 13, 2017, the Debtor filed a reply to the oppositions ("Reply").

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DISCUSSION

The Debtor seeks reconsideration of the Turnover Order and First OSC on the bases that (1) the Debtor was ordered to turn over the solar panels at a time when the solar panels had already been transferred by Access/Debtor to a third party thus it would have been impossible for the Debtor to comply with the Turnover Order at the time it was entered; (2) the solar panels always belonged to Access and were never part of the Debtor's estate; (3) there has been no showing that Access is an alter ego of the Debtor; (4) the Trustee knew prior to the filing of the First OSC Motion that the Debtor no longer had the solar panels; and (5) the Trustee sought a contempt order against the Debtor for failure to comply with the Turnover Order which the Trustee knew the Debtor could not comply with.

In addition to the foregoing, in the Debtor's declaration which was provided to the Trustee on or about November 29, 2016, the Debtor stated that the solar panels had been installed on the Property in December 2011 (Trustee Ex. 7, ¶4), that an agreement was reached in May 2015 for the sale of the solar panels (at the May 10, 2017, hearing, the Debtor indicated this was a verbal agreement)(*id.* at ¶6); the agreement for sale of the solar panels was then allegedly finalized in March 2016 for the sale price of \$14,443.20 (*id.* at ¶7); and the solar panels were removed in April or May 2016 (*id.*).

As a threshold matter, the Court notes that any transfer of the solar panels by Access in March 2016 likely constituted a void transfer and violation of the automatic stay as to the Debtor's bankruptcy estate, as the solar panels were affixed to the Debtor's real property. *In re Salov*, 510 B.R. 720, 729 (Bankr. S.D.N.Y. 2014) ("Courts in all ten circuits have found that the automatic stay protects a possessory interest in property")(internal citations omitted). The stay applies as to all legal and equitable interests in property at commencement of the bankruptcy case. 11 USC § 541(a)(1). The case was commenced on October 13, 2015, and the Trustee's Broker attested that at his inspection of the Property on March 1, 2016, the solar panels were affixed to the Debtor's Property. If the Debtor and Access believed that the solar panels belonged to Access then Access should have sought abandonment of the property and at a minimum, needed to seek relief from stay to proceed with removal of the solar panels from the Property. This is so because the automatic stay specifically "enjoins any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate". 11 U.S.C. §

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362(a)(3).

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Evidentiary Objections

The Court sustains the Trustee's specific objections to the declaration of Maxine Miller.

Due Process

As both the Trustee and United States Trustee have pointed out, the Debtor's initial Motion did not specify which of the six enumerated grounds for relief under Rule 60 would be the basis for the Motion. The Debtor indicated in his Reply (after it was pointed out that he had not indicated which rule he was proceeding under) that he was moving under Rule 60(b)(6). However, the Debtor's Reply does not cure the due process issues created by the failure to indicate the grounds for the Motion. Although the Trustee provided some argument under Rule 60(b)(6), had the Trustee known for a certainty that the Debtor was moving under Rule 60(b)(6), they might have provided additional arguments or they may have devoted more time to these arguments rather than expending energies unnecessarily on Rule 60(b)(1). The United States Trustee, for its part, assumed the Motion was brought under Rule 60(b)(1) and made its arguments only on that basis.

Here, the Debtor's failure to provide due process to interested parties, serves as a sufficient and independent basis for denial of the Motion.

Rule 60(b) Analysis

As to the merits, Rule 60(b)(6) has been used sparingly as an equitable remedy to prevent manifest injustice. The rule is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an

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erroneous judgment. For example, in *Klapprott v. United States*, 335 U.S. 601, 69 S.Ct. 384, 93 L.Ed. 266 (1949), the Court upheld the use of the rule to set aside a default judgment in a denaturalization proceeding because the petitioner had been ill, incarcerated, and without counsel for the four years following the judgment. *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1050 (9th Cir. 1993) Conversely, in *Ackermann v. United States*, 340 U.S. 193, 71 S.Ct. 209, 95 L.Ed. 207 (1950), the Court held that Rule 60(b)(6) should not be invoked where the petitioner bypassed his right to appeal for tactical reasons. *Id.* The Supreme Court has indicated that Rule 60(b)(6) relief may be had "to accomplish justice," but only under "extraordinary circumstances." *Alpine Land* at 1050.

The Ninth Circuit has indicated that the timeliness of a Rule 60(b)(6) motion "depends on the facts of each case," and relief may not be had where "the party seeking reconsideration has ignored normal legal recourses." *In re Pacific Far East Lines, Inc.*, 889 F.2d 242, 249, 250 (9th Cir.1989) (holding relief appropriate where new legislation undermined the soundness of the judgment). *See also United States v. Holtzman*, 762 F.2d 720 (9th Cir.1985) (five year delay permissible where litigant reasonably interpreted an injunction to authorize litigant's conduct and timely relief was sought upon receipt of notice to the contrary); *Rivera v. Puerto Rico Tel. Co.*, 921 F.2d 393 (1st Cir.1990) (twenty-three day delay permitted because party not properly notified of pending motion); *J.D. Pharmaceutical Distrib., Inc. v. Save-On Drugs & Cosmetics Corp.*, 893 F.2d 1201, 1207 (11th Cir.1990) (relief from judgment granted because party never served with requests for admissions or motion for summary judgment). These cases demonstrate that Rule 60(b)(6) relief normally will not be granted unless the moving party is able to show both injury and that circumstances beyond its control prevented timely action to protect its interests.

The Docket reflects that the Debtor never filed any opposition to the Motion for Turnover as required by the Court's local rules. At the hearing on the Motion for Turnover on October 5, 2016, the Debtor appeared in opposition to the motion for turnover of the solar panels and argued that the solar panels belonged to Access, his corporation; that they were not property of his estate; and that he no longer had the solar panels. The Debtor further argued before the Court that he did not believe that the corporate assets were subject to turnover. Without the benefit of legal argument or evidence in opposition to the Motion for Turnover, the Court indicated it would grant the Trustee's motion and require turnover of the solar panels. The Court further

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indicated to the Debtor that the issue of the solar panels could be further dealt with in the contempt proceeding if he failed to turn over the solar panels. The Debtor did not appeal the Court's ruling and then failed to turn over the solar panels. The Trustee then filed the First OSC Motion by which it was seeking that the Court issue an order to show cause and the Debtor failed to file opposition. Subsequently, the Court issued the OSC and the Debtor again failed to file any response to the Court's OSC. Now, several months after the first hearing on the motion for turnover of the solar panels, the Debtor makes the same assertions that he made in October 2016. There has been no change in circumstances other than the Debtor's retention of counsel and no clear explanation as to why the Debtor delayed several months before seeking to set aside the Court's prior orders.

Separately, the evidence in the record supports an inference that the Debtor acted intentionally to remove the solar panels to undermine the Trustee's efforts to sell the Property. Specifically,

1. The Trustee sent his Broker to inspect the Property on March 1, 2016;
2. The Broker asked the Debtor about the solar panels at that inspection;
3. When the Broker spoke to the Debtor in June 2016, the Debtor indicated that the solar panels had been removed; and
4. The Debtor now indicates that the solar panels were removed from the Property and sold in March 2016 (shortly after the Broker's inspection);
5. In November 2016, Debtor's counsel emailed the Trustee a declaration of the Debtor which indicated that the solar panels were installed in December 2011 and that an agreement for sale of the solar panels was finalized in March 2016 for the sale price of \$14,443.20 (well below the original cost of the solar panels of \$156,000). (Lowe Decl. ¶19).

In addition to the foregoing, Maxine Miller, the secretary of Access submitted to the Court a declaration in which she indicated that net proceeds from the sale of the solar panels were used by Access to pay administrative and payroll for the Debtor and for herself. (Miller Decl. ¶6.a.). Based on the evidence that the Debtor may have acted intentionally to remove the solar panels for his own benefit, in addition to the Debtor having received notice of multiple motions by the Trustee seeking turnover which the Debtor ignored or failed to respond to, the Court finds that the Debtor has failed to demonstrate any extraordinary circumstances to justify setting aside of the prior orders pursuant to Rule 60(b)(6).

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In his Reply, the Debtor attempts to cast "confusion" regarding which attorneys were representing him at which times as a fact to meet the "extraordinary circumstances" test. This argument is unavailing. The Debtor's history managing and owning more than one business underscore the fact that he is not an unsophisticated debtor. During the October 5, 2016, hearing, the Debtor expressed frustration at having to respond to so many motions by the Trustee. However, this frustration did not then and does not now appear to have resulted from confusion on his part regarding representation. Moreover, to the extent any issues arose due to specific acts of prior counsel, as indicated by the US Trustee, parties are bound by litigation decisions of their counsel, even if the decisions are careless or negligent.

TENTATIVE RULING

Based on the foregoing, given the due process failure to specify which grounds under Rule 60 the Debtor is moving under, and alternatively, having failed to demonstrate extraordinary circumstances warranting the granting of the Motion under Rule 60(b)(6), the Court is inclined to DENY the Motion in its entirety.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jack C Pryor

Represented By
Trent Thompson

Movant(s):

Jack C Pryor

Represented By
Trent Thompson

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Brandon J Iskander

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6:15-19998 Jack C Pryor

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#9.00 OSC Why Debtor Should Not Be Held in Further Contempt and Be Bodily Detained Until Such Time as He Complies with Court Orders

Also #8

EH__

Docket 263

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jack C Pryor

Represented By
Trent Thompson

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Brandon J Iskander

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6:16-19799 Jaison Vally Surace

Chapter 7

Adv#: 6:17-01025 Pringle v. Surace

#10.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01025. Complaint by John P. Pringle against Jaison Vally Surace. (Charge To Estate - \$350.00). (Attachments: # 1 Adversary Coversheet) Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e)))

From: 4/12/17

EH__

Docket 1

***** VACATED *** REASON: ORDER ENTERED 6/13/17 WAIVING DISCHARGE**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Defendant(s):

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Plaintiff(s):

John P. Pringle

Represented By
Todd A Frealy
Carmela Pagay

Trustee(s):

John P Pringle (TR)

Represented By
Todd A Frealy
Carmela Pagay

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6:17-10273 Ever Ramirez Barreto

Chapter 7

Adv#: 6:17-01072 Grobstein, Chapter 7 Trustee v. Barreto Tapia et al

#11.00 Status Conference RE: [1] Adversary case 6:17-ap-01072. Complaint by Howard B. Grobstein, Chapter 7 Trustee against Magdalena Barreto Tapia, Iban Barreto Hernandez for: (1) Avoidance of Actual Fraudulent Transfer [11 U.S.C. § 548(a)(1)(A)]; (2) Avoidance of Constructive Fraudulent Transfer [11 U.S.C. § 548(a)(1)(B)]; (3) Recovery of Avoided Transfer [11 U.S.C. § 550]; and (4) Turnover [11 U.S.C. § 542(a)]

EH _____

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ever Ramirez Barreto

Represented By
Scott D McDonald

Defendant(s):

Iban Barreto Hernandez

Pro Se

Magdalena Barreto Tapia

Pro Se

Plaintiff(s):

Howard B. Grobstein, Chapter 7

Represented By
Noreen A Madoyan

Trustee(s):

Howard B Grobstein (TR)

Represented By
Noreen A Madoyan
Craig G Margulies

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6:14-21472 David Joe Strait

Chapter 7

Adv#: 6:14-01340 Leong v. Strait

#12.00 CONT Status Conference RE: [1] Adversary case 6:14-ap-01340. Complaint by Brenda Leong against David Joe Strait. false pretenses, false representation, actual fraud))

From: 2/8/17, 3/22/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Joe Strait

Represented By
Brian J Soo-Hoo

Defendant(s):

David Joe Strait

Pro Se

Plaintiff(s):

Brenda Leong

Represented By
Marc E Grossman

Trustee(s):

Lynda T. Bui (TR)

Pro Se

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6:15-16301 Audrey Zumwalt

Chapter 7

Adv#: 6:15-01270 Maradiaga, Sr et al v. Zumwalt

#13.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01270. Complaint by Julio Maradiaga Sr, Kathleen Maradiaga against Audrey Zumwalt . false pretenses, false representation, actual fraud) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury))

From: 12/2/15, 3/30/16, 4/6/16, 7/27/16, 11/30/16, 12/7/16, 4/12/17

EH__

Docket 1

***** VACATED *** REASON: ADVERSARY DISMISSED 6/8/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Audrey Zumwalt

Represented By
Javier H Castillo

Defendant(s):

Audrey Zumwalt

Represented By
Javier H Castillo
Mario Alvarado

Plaintiff(s):

Kathleen Maradiaga

Represented By
Mario Alvarado

Julio Maradiaga Sr

Represented By
Mario Alvarado

Trustee(s):

Robert Whitmore (TR)

Pro Se

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CONT... Audrey Zumwalt

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6:15-18887 Manors San Bernardino Ave LLC

Chapter 7

Adv#: 6:16-01148 Pringle v. O. Allen Alpay, Trustee of the Alpay Living Trust

#14.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01148. Complaint by John P. Pringle against Alpay Living Trust, Manors Construction & Development Co., Inc. (21 (Validity, priority or extent of lien or other interest in property)),(91 (Declaratory judgment))

From: 8/31/16, 10/5/16, 10/11/16, 1/11/17, 1/24/17, 2/8/17, 5/10/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 7/26/17 AT 2:00 PM**

Tentative Ruling:

10/05/2016

This matter is being CONTINUED to October 11, 2016, at 3:00 p.m. The parties received telephonic notice of the continuance from the Court.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Manors San Bernardino Ave LLC

Represented By
Gaurav Datta

Defendant(s):

Manors Construction &

Pro Se

O. Allen Alpay, Trustee of the Alpay

Represented By
Stephen B Goldberg
Renee De Golier
John L Bailey

Plaintiff(s):

John P. Pringle

Represented By

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CONT... Manors San Bernardino Ave LLC

Chapter 7

Scott Talkov
Douglas A Plazak

Trustee(s):

John P Pringle (TR)

Represented By
Larry D Simons
Scott Talkov
Frank X Ruggier

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6:15-21808 Clifford Patrick Johnson

Chapter 7

Adv#: 6:16-01122 Johnson v. NELNET LOAN SERVICES INC et al

#15.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01122. Complaint by Clifford Patrick Johnson against NELNET LOAN SERVICES INC Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan))

From: 7/6/16, 10/5/16, 12/7/16, 3/22/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Clifford Patrick Johnson Pro Se

Defendant(s):

Educational Credit Management Represented By
Timothy P Burke

NELNET LOAN SERVICES INC Pro Se

Plaintiff(s):

Clifford Patrick Johnson Pro Se

Trustee(s):

John P Pringle (TR) Pro Se

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6:16-12574 William Dillingham Smyth

Chapter 7

Adv#: 6:16-01212 Pringle v. Smyth

#16.00 CONT Status Conference Re: Complaint by John P. Pringle against Elena Smyth. Nature of Suit: 13 - Recovery of money/property - 548 fraudulent transfer

From: 11/2/16, 1/11/17, 4/26/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Dillingham Smyth

Represented By
Kevin M Cortright

Defendant(s):

Elena Smyth

Represented By
C Scott Rudibaugh

Plaintiff(s):

John P. Pringle

Represented By
Melissa Davis Lowe
Rika Kido

Trustee(s):

John P Pringle (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe

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6:16-13644 Yolanda Yvette Tyes

Chapter 7

Adv#: 6:16-01200 Chicago Title Insurance Company v. Tyes

#17.00 CONT Status Conference Re: Complaint by Chicago Title Insurance Company against Yolanda Yvette Tyes. (d),(e), 62 - Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud

From: 10/19/16, 11/9/16, 1/11/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Yolanda Yvette Tyes Pro Se

Defendant(s):

Yolanda Yvette Tyes Pro Se

Plaintiff(s):

Chicago Title Insurance Company Represented By
Charles C H Wu
Thanh-Thuy T Luong
Vikram M Reddy

Trustee(s):

Larry D Simons (TR) Pro Se

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6:16-17745 Patricia Glenn Apostolakis
Adv#: 6:16-01286 Apostolakis v. Neiderhiser

Chapter 7

#18.00 CONT Motion to Vacate Default

From: 4/26/17

Also #19 & #20

EH _____

Docket 15

Tentative Ruling:

04/26/2017

BACKGROUND

On August 29, 2016, Patricia Glenn Apostolakis ("Debtor or "Plaintiff") filed her petition for chapter 7 relief. On December 1, 2016, the Debtor filed a complaint against Patricia Neiderhiser ("Defendant") to avoid preferential and/or fraudulent transfers ("Complaint"). The Complaint generally seeks to avoid a judgment lien on improved real property known as 10132 Phelan Road, in Oak Hills, California (the "Property").

On December 6, 2016, the Plaintiff filed her executed service of summons (Docket No. 3) indicating that the summons and complaint was served on Defendant on December 6, 2016. The Summons provided Defendant with a deadline of January 4, 2017, to file her answer.

An amended complaint was filed by the Plaintiff on December 29, 2016 (the "FAC").

On February 2, 2017, the Plaintiff re-filed a copy of her executed service of summons (Docket No. 5).

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CONT...

Patricia Glenn Apostolakis

Chapter 7

On February 6, 2017, the Plaintiff filed a request for entry of default as to the Defendant which was entered by the Clerk on February 7, 2017.

On March 22, 2017, the Plaintiff filed her Motion for Default Judgment against the Defendant (the "MDJ").

On April 11, 2017, the Defendant filed a Motion to vacate (or "set aside") the default ("MSA") and to expedite a hearing on her motion to vacate. The Court entered an order setting the MSA to be heard concurrent with the Motion for Default Judgment.

On April 20, 2017, the Plaintiff filed opposition to the MSA ("Opposition").

DISCUSSION

Federal Rule of Civil Procedure 55(c) (made applicable by Fed. R. Bankr.P. 7055) provides that "[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)". FRBP 7055.

To determine "good cause" under this Rule, a court must consider three factors:

- (1) whether the party seeking to set aside the default engaged in culpable conduct that led to the default;
- (2) whether it had no meritorious defense; or
- (3) whether reopening the default judgment would prejudice the other party.

United States v. Signed Personal Check No. 730 of Yubran S. Mesle, 615 F.3d 1085, 1091 (9th Cir. 2010) (citing *Franchise Holding II v. Huntington Rests. Group, Inc.*, 375 F.3d 922, 925–26 (9th Cir. 2004), cert. denied 544 U.S. 949 (2005)). This test is disjunctive, such that a finding that any one of the factors is true is sufficient for the court to refuse to set aside the default. It is the same test used to determine whether a default judgment should be set aside under Civil Rule 60(b). *Id.* While a court has the discretion to refuse to set aside a default judgment for excusable neglect under Fed.R.Civ.P. 60(b) if it finds one of the enumerated factors present, it is not mandatory that it do so. *See Brandt v. Am. Bankers Ins. Co. of Fla.*, 653 F.3d 1108

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CONT... Patricia Glenn Apostolakis

Chapter 7

(9th Cir.2011). "Crucially, however, 'judgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits.' " *Signed Personal Check No. 730 at 1091* (citing *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir.1984)).

Defendant asserts that it appears the Complaint was served on her at her old address in Boron, California and as such she did not receive it. (Neiderhiser Decl. ¶3). The Defendant concedes that she received the FAC (but not the amended summons) at her address in Colorado on or about January 3 or 4 of 2017. The Defendant further asserts that the FAC did not indicate the time limit for the filing of a response. (*Id.* at ¶ 4). In response, the Plaintiff asserts that the Defendant has failed to corroborate her assertion that she has moved. Plaintiff suggests that the Defendant may own both properties and is simply asserting that she has moved in an effort to excuse her "sleeping on her rights" and lack of diligence. Here, Defendant may have engaged in "culpable conduct" regarding her address, and it does not appear Defendant has established a meritorious defense. However, any delay has been minor. Nevertheless, the Court is cognizant of the fact that as a direct result of Defendant's three month delay in seeking to set aside the default despite having been aware of the Complaint since January 3 or 4, Plaintiff has unnecessarily expended fees in preparation of the Motion for Default Judgment, and such fees would otherwise prejudice Movant.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the MSA conditioned upon the Defendant's payment of Plaintiff's fees and costs associated with the filing of the Motion for Default Judgment.

The Court is further inclined to DENY the Motion for Default Judgment as moot based on the Court's granting of the MSA.

APPEARANCES REQUIRED.

Party Information

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 21, 2017

Hearing Room 303

2:00 PM

CONT... Patricia Glenn Apostolakis

Chapter 7

Debtor(s):

Patricia Glenn Apostolakis

Represented By
Todd L Turoci

Defendant(s):

Patricia Neiderhiser

Represented By
Phillip Myer

Movant(s):

Patricia Neiderhiser

Represented By
Phillip Myer

Plaintiff(s):

Patricia Apostolakis

Represented By
Todd L Turoci

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 21, 2017

Hearing Room 303

2:00 PM

6:16-17745 Patricia Glenn Apostolakis

Chapter 7

Adv#: 6:16-01286 Apostolakis v. Neiderhiser

#19.00 CONT Motion for Default Judgment

From: 4/26/17

Also #18 & #20

EH _____

Docket 13

Tentative Ruling:

04/26/2017

The Court is inclined to DENY the Motion for Default Judgment as moot based on the Court's granting of the MSA.

Party Information

Debtor(s):

Patricia Glenn Apostolakis

Represented By
Todd L Turoci

Defendant(s):

Patricia Neiderhiser

Represented By
Phillip Myer

Movant(s):

Patricia Apostolakis

Represented By
Todd L Turoci

Plaintiff(s):

Patricia Apostolakis

Represented By
Todd L Turoci

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 21, 2017

Hearing Room 303

2:00 PM

CONT... Patricia Glenn Apostolakis

Chapter 7

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 21, 2017

Hearing Room 303

2:00 PM

6:16-17745 Patricia Glenn Apostolakis

Chapter 7

Adv#: 6:16-01286 Apostolakis v. Neiderhiser

#20.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01286. Complaint by Patricia Apostolakis against Patricia Neiderhiser. (Fee Not Required). (Attachments: # 1 Adv. Proc. Cover Sheet # 2 Summons) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer))

From: 2/8/17, 3/29/17, 4/26/17

Also #18 & #19

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Glenn Apostolakis

Represented By
Todd L Turoci

Defendant(s):

Patricia Neiderhiser

Represented By
Phillip Myer

Plaintiff(s):

Patricia Apostolakis

Represented By
Todd L Turoci

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 21, 2017

Hearing Room 303

2:00 PM

6:13-29922 Nancy Ann Howell

Chapter 7

Adv#: 6:14-01070 Law Office of Andrew S. Bisom et al v. Howell

**#21.00 CONT Motion For Summary Judgment
(Holding Date)**

From: 12/2/15, 2/17/16, 3/2/16, 3/16/16, 4/27/16, 9/21/16, 12/14/16

Also #22

EH__

Docket 62

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nancy Ann Howell Pro Se

Defendant(s):

Nancy Ann Howell Pro Se

Movant(s):

Law Office of Andrew S. Bisom Represented By
Andrew S Bisom

Plaintiff(s):

Eisenberg Law Firm, APC Represented By
Andrew S Bisom

Law Office of Andrew S. Bisom Represented By
Andrew S Bisom

Trustee(s):

Steven M Speier (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 21, 2017

Hearing Room 303

2:00 PM

CONT... Nancy Ann Howell

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 21, 2017

Hearing Room 303

2:00 PM

6:13-29922 Nancy Ann Howell

Chapter 7

Adv#: 6:14-01070 Law Office of Andrew S. Bisom et al v. Howell

#22.00 CONT Status Conference RE: [1] Adversary case 6:14-ap-01070. Complaint by Law Office of Andrew S. Bisom, Eisenberg Law Firm, APC against Nancy Ann Howell. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury))

From: 5/14/14, 7/2/14, 12/10/14, 3/18/15, 4/22/15, 5/20/15, 7/22/15, 10/28/15, 12/2/15, 2/17/16, 3/2/16, 3/16/16, 4/27/16, 9/21/16, 12/14/16

Also #21

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nancy Ann Howell Pro Se

Defendant(s):

Nancy Ann Howell Pro Se

Plaintiff(s):

Eisenberg Law Firm, APC Represented By
Andrew S Bisom

Law Office of Andrew S. Bisom Represented By
Andrew S Bisom

Trustee(s):

Steven M Speier (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:30 PM

6:16-20260 Javier Lopez

Chapter 13

Adv#: 6:17-01054 Amarillo College of Hairdressing, Inc. v. Lopez

#1.00 OSC Why Adversary Complaint Should Not Be Dismissed

Also #2

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Javier Lopez

Represented By
Christopher Hewitt

Defendant(s):

Javier Lopez

Pro Se

Joint Debtor(s):

Carmen Lopez

Represented By
Christopher Hewitt

Plaintiff(s):

Amarillo College of Hairdressing,

Represented By
Eamon Jafari

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:30 PM

6:16-20260 Javier Lopez

Chapter 13

Adv#: 6:17-01054 Amarillo College of Hairdressing, Inc. v. Lopez

#2.00 CONT Status Conference Re: Complaint by Amarillo College of Hairdressing, Inc., against Javier Lopez. false pretenses, false representation, actual fraud, 67 - Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 68 - Dischargeability - 523(a)(6), willful and malicious injury

From: 5/11/17

Also #1

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Javier Lopez

Represented By
Christopher Hewitt

Defendant(s):

Javier Lopez

Pro Se

Joint Debtor(s):

Carmen Lopez

Represented By
Christopher Hewitt

Plaintiff(s):

Amarillo College of Hairdressing,

Represented By
Eamon Jafari

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:30 PM

CONT... Javier Lopez

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:30 PM

6:16-20109 Gilberto Herrera and Monica Herrera

Chapter 13

#3.00 CONT Motion to Avoid JUNIOR LIEN with Trinity Financial Servies LLC

FROM: 3/23/17, 4/27/17

Also #4

EH__

Docket 16

Tentative Ruling:

Hearing Date: 01/26/2017

Summary of the Motion:

Notice: Ok

Opposition: Yes

Address: 1732 San Key Court, San Jacinto, CA 92582

First trust deed: \$\$386,163 with Fannie Mae

Second trust deed (to be avoided): \$149,509 with Trinity Financial Services LLC

Fair market value: \$337,362

TENTATIVE

- (1) Trinity requests additional time to obtain an appraisal of the Property; and
- (2) Trinity asserts that the loan payoff statement provided by the Debtors as Exhibit "A" which sets forth the amount of the first mortgage is hearsay and alternatively, that it indicates there may have been a loan modification with the potential for loan forgiveness as to a portion of the loan principal

First, the Court is inclined to grant Trinity's request for additional time. Separately, the Court overrules Trinity's hearsay objection but finds that Trinity's request for the Debtors to indicate whether any portion of the loan principal has been forgiven is reasonable.

APPEARANCES REQUIRED.

Party Information

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:30 PM

CONT... Gilberto Herrera and Monica Herrera

Chapter 13

Debtor(s):

Gilberto Herrera

Represented By
Todd L Turoci

Joint Debtor(s):

Monica Herrera

Represented By
Todd L Turoci

Movant(s):

Monica Herrera

Represented By
Todd L Turoci

Gilberto Herrera

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:30 PM

6:16-20109 Gilberto Herrera and Monica Herrera

Chapter 13

#4.00 CONT Confirmation of Chapter 13 Plan

From: 1/5/17, 1/26/17, 3/23/17, 4/27/17

Also #3

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gilberto Herrera

Represented By
Todd L Turoci

Joint Debtor(s):

Monica Herrera

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, June 22, 2017

Hearing Room 303

12:30 PM

6:16-20003 Pamula Raye St Dennis

Chapter 13

#5.00 Application for Compensation First and Final Application for Approval of Fees and Reimbursement of Expenses by Shulman Hodges & Bastian LLP, Attorneys for the Former Chapter 7 Trustee; Period: 12/14/2016 to 5/3/2017, Fee: \$12,630, Expenses: \$532.53

Also #6

EH__

Docket 74

Tentative Ruling:

6/22/17

The Court is inclined to APPROVE the requested fees of \$12,630 and the requested expenses of \$532.53.

APPEARANCES WAIVED. Movant to lodge order within seven days. If opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Pamula Raye St Dennis

Represented By
Cynthia A Dunning

Movant(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Melissa Davis Lowe
Elyza P Eshaghi
Brandon J Iskander

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:30 PM

6:16-20003 Pamula Raye St Dennis

Chapter 13

#6.00 Application for Compensation with Proof of Service. The hearing is scheduled for 06/22/17 for Charles W Daff (TR), Trustee Chapter 7, Period: 11/10/2016 to 5/31/2017, Fee: \$2,385.00, Expenses: \$2.06.

Also #5

EH__

Docket 78

Tentative Ruling:

6/22/17

I. Notice/Service

Local Rule 2016-(1)(c)(4)(A) requires thirty days notice of intent to file final report. Trustee provided twenty-eight days notice, and then set the hearing exactly twenty-one days after the filing of his final fee app. Aggregate notice period is therefore short by two days.

Local Rule 2016-(1)(c)(4)(B) requires professionals to file their fee application within twenty-one days of the filing of Trustee's notice of intent. Trustee filed his fee application seven days late.

It is not clear whether Local Rule 2016 should be applicable to this application because it is really designed for the filing of a Trustee's final report.

II. Background

This case was a Chapter 7 case that was converted to Chapter 13. The conversion order stated that both the chapter 7 trustee and his attorney were to file claims for administrative fees, subject to Debtor's right to object. The filing of fee applications by Trustee and Trustee's attorney followed.

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CONT... Pamula Raye St Dennis

Chapter 13

11 U.S.C. § 330(a)(3) (2005) provides factors to be considered in determining the reasonableness of requested compensation. The Court has reviewed the requested fees and expenses of Trustee and finds them to be generally reasonable. Furthermore, Debtor has declined to oppose the Trustee's application, and the Court deems the absence of opposition to be consent to the relief requested pursuant to Local Rule 9013-1(h).

III. Legal Analysis

11 U.S.C. § 326(a), however, imposes a statutory maximum on a Trustee's compensation in a Chapter 7 case. The statute states:

- (a) In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

11 U.S.C. §326(a).

"Although the language of section 326(a) seems straightforward, it 'becomes the source of controversy when a former Chapter 7 Trustee seeks compensation in a case that is converted to one under Chapter 13 prior to the disbursement of any monies by the trustee in the Chapter 7 case.'" *In re Pivinski*, 366 B.R. 285, 289 (Bankr. D. Del. 2007) (quoting *In re Silvus*, 329 B.R. 193, 207 (Bankr. E.D. Va. 2005). As the Court noted in *Pivinski*, there are at least six different interpretations of the operation of § 326(a) when a case is converted to Chapter 13. *See id.* ((1) *quantum meruit*; (2) multiple trustee theory; (3) no award permitted; (4) separate cases; (5) constructive disbursement theory; (6) awarding fees pursuant to § 105(a)); *see also In re Philips*, 507 B.R. 2, 5 (Bankr. N.D. Ga. 2014) ("The Code is silent regarding how to calculate this cap when a case has been converted, as opposed to a fully administered Chapter 7 case. This silence has led to a variety of irreconcilable reported court decisions, which

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Judge Mark Houle, Presiding
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Thursday, June 22, 2017

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12:30 PM

CONT... Pamula Raye St Dennis

Chapter 13

are based on as many as six different discernible theories."); 329 B.R. at 206-13 (providing an in-depth analysis of each of the six different theories).

As noted by the case law split, and in the absence of any binding authority, the Court is presented with the following legal questions: Is the Court allowed to award compensation to a Trustee outside of the confines of § 326(a)? If such an award is permissible, what is the appropriate legal standard for the award of compensation in such a situation? If such an award is not permissible, does § 326(a) allow compensation in this situation? In order to answer the posited questions, it is necessary to survey and evaluate the different approaches adopted by bankruptcy courts.

A. Quantum Meruit

Courts that have adopted the *quantum meruit* standard generally cited policy considerations. To wit:

We adopt the reasoning of *In re Berry* and hold that the chapter 7 trustee should be compensated on a quantum meruit basis in a case that is not fully administered, through no fault of the trustee, where the trustee performs substantial services that result in discovery of assets for the benefit of creditors. Conversely, the court does not envision windfalls for the trustee merely because a debtor converts for reasons unrelated to action by the trustee. We are further convinced that the effect of this decision will be to discourage a debtor's intentional concealment of assets and encourage a trustee's diligent discovery of assets.

In re Moore, 235 B.R. 414, 416-17 (Bankr. W.D. Ky. 1999). The *Moore* court determined that the award should be "based on the reasonable value of the actual and necessary services rendered by the trustee" and that the burden was on the trustee to justify the requested fee. *Id.* at 417.

While *In re Moore* approvingly cited the reasoning of *In re Berry*, its holding is technically distinct. While *In re Berry* does sound in quantum meruit, its holding falls into the "multiple trustee" approach discussed in section III.B, *infra*. See generally 166 B.R. 932, 935 (Bankr. D. Or. 1994) ("The court agrees with other courts that have

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CONT... **Pamula Raye St Dennis**

Chapter 13

considered this issue, the trustee is entitled to compensation based upon the reasonable value of the actual and necessary services which were rendered by the trustee on a quantum meruit basis."). This distinction illustrates the problem with the approach adopted by *In re Moore*: while other courts have advanced a quasi- quantum meruit philosophy to the issue, their reasoning has been grounded in an alternative approach. *In re Moore*, on the other hand, states the following:

A literal application of section 326(a) would appear to provide that if no funds were disbursed by the trustee to creditors, there are no funds to which the percentage formula may be applied. Most bankruptcy courts addressing this question, however, decline to apply a literal reading of § 326(a) and restrict application of the section to fully administered cases only. Rather, where a case is converted or dismissed, several courts have authorized compensation to the trustee upon a showing that the trustee has provided substantial services which benefit the estate. One court denied the trustee compensation, but explained that the denial of fees was premised on the minimal services actually performed by the trustee.

The above reasoning indicates that *In re Moore*, the primary source of the quantum meruit approach in *In re Silvas*'s survey, did not intend to create a unique, distinct approach to the issue, as it did not advance any new legal theory or reasoning. *In re Moore*, furthermore, did not offer an explanation as to why quantum meruit would be uniquely available to a Chapter 7 trustee of a dismissed or converted case. This reasoning is critical, because the general consensus is that § 326(a) is not simply a guide, but a statutory maximum. See, e.g., *In re Hance Meyer, Inc.*, 161 B.R. 839, 840 (Bankr. N.D. Cal. 1993) ("The court's discretion ends at the maximum ceiling.") (citing *In re Fin. Corp. of Am.*, 114 B.R. 221, 224 (B.A.P. 9th Cir. 1990); see also *In re Wire Cloth Prods., Inc.*, 130 B.R. 798, 811 (Bankr. N.D. Ill. 1991) ("The maximum statutory fee is indeed a ceiling, not a floor."). Absent an explanation of why it is legally permissible to invoke quantum meruit despite the operation of § 326(a), the theory is not compelling.¹ And the cases that have offered such an explanation fall into the different approaches outlined in section III.B, *infra*.²

B. Multiple Trustees, Multiple Cases, and Constructive Disbursement

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CONT... Pamula Raye St Dennis

Chapter 13

The three approaches that were referred to by *In re Silvus* as "multiple or composite trustee theory," "separate and distinct case theory," and "constructive disbursement," all share one common theme: the disbursements made to or by the Chapter 13 trustee should be attributed, at least to some extent, and, possibly, with some deduction, to the Chapter 7 trustee. The multiple trustee theory invokes § 326(c), which states:

- (c) If more than one person serves as trustee in the case, the aggregate compensation of such persons for such service may not exceed the maximum compensation prescribed for a single trustee by subsection (a) or (b) of this section, as the case may be.

Thus, the court in *In re Rodriguez*, 240 B.R. 912 (Bankr. D. Colo. 1999) utilized this provision, attributed the disbursements made by the Chapter 13 trustee to the Chapter 7 trustee, and then subtracted the amount of compensation the Chapter 13 trustee would receive from the statutory calculation in § 326(a).

While it is true that § 326(c) simply applies to a case with multiple trustees, regardless of the chapter the case is proceeding under, application of the rule in converted cases is problematic. Section 326(c) states that the compensation cannot exceed the maximum "prescribed for a single trustee by subsection (a) or (b)." Technically, the request would be governed by § 326(b) if the case was, at the time under chapter 12 or 13, and governed by § 326(a), if the case was under chapter 7 or 11. Therefore, under this reading, the chapter 7 trustee would be eligible to receive the difference between the chapter 13 statutory cap, and the amount of compensation actually received by the chapter 13 trustee.

More importantly, section § 326(c) does not appear to be an independent source of awarding compensation. Its plain language serves to limit the amount of compensation trustees can receive in a single case, not provide an independent calculation for cases with multiple trustees. The chapter 7 trustee would still have to point to authority permitting the award of fees, and it is not clear that this interpretation resolves the inappropriateness of awarding fees under § 326(a) in this situation. Quite simply, this theory does not explain how any disbursements would be made "[i]n a case under chapter 7 or 11" as required by § 326(a).

The constructive disbursement approach also attributes disbursements made by the

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CONT... Pamula Raye St Dennis

Chapter 13

chapter 13 trustee to the chapter 7 trustee, but concludes that § 326(c) is inapplicable, and, therefore, no subtraction equivalent to the chapter 13 trustee's compensation is warranted. *See generally In re Hages*, 252 B.R. 789 (Bankr. N.D. Cal. 2000). This approach is subject to the same concerns as the multiple trustee theory: it is not clear what would be the basis for the award. By its language, § 326(a) applies to "a case under chapter 7 or 11," and this is not such a case.

The final approach is the separate case theory. Under this theory, the funds turned over to the second trustee by the first trustee are inputted into the statutory calculation of § 326(a). Notably, this theory appears to have been developed in a case that was converted to chapter 7 from chapter 11. *See In re Fin. Corp. of Am.*, 114 B.R. 221, 222 (B.A.P. 9th Cir. 1990). In both a chapter 7 case and a chapter 11 case, § 326(a) serves as the basis for trustee compensation. Here, however, the case has been converted to chapter 13, and, therefore, is no longer a "a case under chapter 7 or 11." Nevertheless, under this theory it could be argued that disbursements were made (or money turned over) in a case under chapter 7 or 11 (the disbursements by the chapter 7 trustee to the chapter 13).

Ultimately, the Court finds that the multiple trustee, and constructive disbursement theories lack compelling legal justification. Section 326(a) is applicable in a "case under chapter 7 or 11," yet these two approaches input disbursements made by a chapter 13 trustee in a chapter 13 case into the § 326(a) calculation. The plain language of the status indicates that it is § 326(b), not § 326(a), that is applicable to disbursements made in a chapter 13 case.

Nevertheless, the Court finds that the multiple case approaches is not subjected to the above problem and provides a plausible basis upon which to award fees. It can be reasonably argued that a chapter 7 trustee is disbursing (or turning over) funds to a party in interest (the chapter 13 trustee) at the time of conversion, and that, therefore, such funds can be used in the § 326(a) statutory calculation.

C. Strict Interpretation

Finally, the bankruptcy courts that have declined to adopt any of the approaches outlined above have simply concluded that the plain language of the statute prohibits

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CONT... Pamula Raye St Dennis

Chapter 13

compensation of a chapter 7 trustee in these circumstances. *See In re Silvus*, 329 B.R. 193, 214 (Bankr. E.D. Va. 2005) ("Upon consideration of the numerous theories discussed above, this Court concludes the more compelling position is that which precludes awarding compensation based upon the plain language of Section 326(a). This Court finds, as did the courts in *Fischer*, *Woodworth*, *Murphy*, *Celano*, and *Meadows*, that Congress has spoken clearly in Section 326(a), and thus, it would be inappropriate for this Court to look beyond the bounds of the statute to formulate a basis upon which to award Ruby compensation.").

D. Analysis

Here, the chapter 7 trustee has not made any argument regarding which standard the Court should apply, and does not otherwise indicate what mechanism allows for payment to a Chapter 7 trustee in this situation where the distribution contemplated by § 326(a) is not done.

Notwithstanding, fee descriptions for services for 2/10/17 to 4/11/17 appear vague or otherwise describe services that were or should have been performed by counsel. Also, the Court inclined to reduced fees for the preparation of the form fee application to 0.6 hours. Therefore, subject to discussion as to an applicable legal basis to award trustee fees, the Court is inclined to grant the requested fees in the reduced amount of \$1485, and costs of \$2.06.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Pamula Raye St Dennis

Represented By
Cynthia A Dunning

Movant(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Melissa Davis Lowe
Elyza P Eshaghi
Brandon J Iskander

**United States Bankruptcy Court
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CONT... Pamula Raye St Dennis

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:30 PM

6:17-10769 Semone Ramone Monroe

Chapter 13

#7.00 CONT Objection to Claim Number 5 by Claimant Internal Revenue Service

From: 4/27/17

EH__

Docket 16

***** VACATED *** REASON: WITHDRAWAL FILED 5/22/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Semone Ramone Monroe

Represented By
Jenny L Doling

Movant(s):

Semone Ramone Monroe

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:30 PM

6:17-11075 Ryan Christopher Murphy and Theresa Marie Murphy

Chapter 13

#8.00 Motion RE: Objection to Claim Number 3 by Claimant Internal Revenue Service

EH__

Docket 19

Tentative Ruling:

6/22/17

Background:

On February 13, 2017, Christopher and Theresa Murphy ("Debtors") filed a Chapter 13 voluntary petition. On March 21, 2017, the IRS filed a priority claim in the amount of \$4,663 ("Claim 3"). On April 6, 2017, Debtors' Chapter 13 plan was confirmed. On May 4, 2017, Debtors filed a notice of submission of 2016 tax returns to Chapter 13 Trustee. On May 16, 2017, Debtors filed an objection to Claim 3 on the basis that their tax delinquency had been cured.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing

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CONT... Ryan Christopher Murphy and Theresa Marie Murphy
upon a motion for relief. *Id.*

Chapter 13

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Claim 3 states that Debtors owed \$4,663.40 in relation to their 2016 tax returns. Debtors do not dispute that they owed the amount stated on Claim 3 at the time that it was filed. Instead, Debtors' declaration states that they filed their tax return on April 17, 2017, and that, therefore, the claim should be amended or withdrawn. While the motion argues that no tax is due on account of the 2016 returns, there is no evidence presented to support this argument.

Tentative Ruling

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CONT... Ryan Christopher Murphy and Theresa Marie Murphy

Chapter 13

The Court is inclined to OVERRULE the objection without prejudice.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ryan Christopher Murphy

Represented By
Jenny L Doling

Joint Debtor(s):

Theresa Marie Murphy

Represented By
Jenny L Doling

Movant(s):

Theresa Marie Murphy

Represented By
Jenny L Doling

Ryan Christopher Murphy

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-12758 Luis A Jovel

Chapter 13

#9.00 CONT Confirmation of Chapter 13 Plan

From: 5/11/17

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luis A Jovel

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-13037 Robert P Guerrero, Jr.

Chapter 13

#10.00 CONT Confirmation of Chapter 13 Plan

From: 5/18/17

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert P Guerrero Jr.

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

12:30 PM

6:17-13091 Kristin Lynn Robles

Chapter 13

#11.00 CONT Confirmation of Chapter 13 Plan

From: 5/18/17

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kristin Lynn Robles

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-13285 Jose Carlos Pina

Chapter 13

#12.00 CONT Confirmation of Chapter 13 Plan

From: 6/1/17

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Carlos Pina

Represented By
Bryn C Deb

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-13719 Sam Venero

Chapter 13

#13.00 CONT Confirmation of Chapter 13 Plan

From: 6/8/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sam Venero

Represented By
Edward T Weber

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, June 22, 2017

Hearing Room 303

12:30 PM

6:17-13836 Hermelinda Diaz

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 5/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hermelinda Diaz

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-13848 Darrell Glenn Brown and Susan Marie Brown

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Darrell Glenn Brown

Represented By
Julie J Villalobos

Joint Debtor(s):

Susan Marie Brown

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-13850 Jose Luis Chavez and Esperanza Chavez

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 5/26/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Luis Chavez Pro Se

Joint Debtor(s):

Esperanza Chavez Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
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6:17-13851 Richard J Sarenana, Jr and Maria Sarenana

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard J Sarenana Jr

Represented By
Cynthia A Dunning

Joint Debtor(s):

Maria Sarenana

Represented By
Cynthia A Dunning

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-13917 Teresa A Salvail and Michael D Salvail

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

Also #18.1

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa A Salvail

Represented By
Julie J Villalobos

Joint Debtor(s):

Michael D Salvail

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-13917 Teresa A Salvail and Michael D Salvail

Chapter 13

#18.10 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 2521 Moosedeer Dr Ontario, CA 91761

MOVANT: UNITED CATHOLICS FEDERAL CREDIT UNION

From: 6/20/17

Also #18

EH__

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa A Salvail

Represented By
Julie J Villalobos

Joint Debtor(s):

Michael D Salvail

Represented By
Julie J Villalobos

Movant(s):

United Catholics Federal Credit

Represented By
Alana B Anaya

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-13922 John Empey and Madeleine Tappe

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Empey

Represented By
Christopher Hewitt

Joint Debtor(s):

Madeleine Tappe

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-13923 Suzanne Berry

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Suzanne Berry

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

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6:17-13929 Jose Lopez Garcia

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 5/30/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Lopez Garcia

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-13967 Caesar A Rodriguez

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 5/30/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Caesar A Rodriguez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-13984 Harris Miller

Chapter 13

#23.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harris Miller

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

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6:17-13988 Robert Bruce Dunham

Chapter 13

#24.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 5/30/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Bruce Dunham

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, June 22, 2017

Hearing Room 303

12:30 PM

6:17-14019 Osbaldo Concencion Martinez

Chapter 13

#25.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 5/30/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Osbaldo Concencion Martinez Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-14056 Rafael Chavez Perez and Catalina Chavez

Chapter 13

#26.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rafael Chavez Perez

Represented By
Manfred Schroer

Joint Debtor(s):

Catalina Chavez

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-14075 Stephanie Lobato

Chapter 13

#27.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stephanie Lobato

Represented By
William Radcliffe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Riverside
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Hearing Room 303

12:30 PM

6:17-14091 Tyra Bagby

Chapter 13

#28.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 6/5/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tyra Bagby

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-14147 Esteban David Stremiz

Chapter 13

#29.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 6/1/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Esteban David Stremiz

Represented By
Robert J Spitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-14150 Kaleo Mehia Roque Leopoldo and Andrea Ann Leopoldo

Chapter 13

#30.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kaleo Mehia Roque Leopoldo

Represented By
Nicholas M Wajda

Joint Debtor(s):

Andrea Ann Leopoldo

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-14183 Christopher Grosey

Chapter 13

#31.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 6/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Grosey

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-14185 Gerald E Miller and Shirley Miller

Chapter 13

#32.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerald E Miller

Represented By
Paul Y Lee

Joint Debtor(s):

Shirley Miller

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-14186 Joshua Aguilar and Cynthia Rodriguez

Chapter 13

#33.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joshua Aguilar

Represented By
Paul Y Lee

Joint Debtor(s):

Cynthia Rodriguez

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-14187 Andre J Booker and Carrie L Booker

Chapter 13

#34.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andre J Booker

Represented By
Paul Y Lee

Joint Debtor(s):

Carrie L Booker

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-14189 Gabriel Valencia, Jr. and Maricela Valencia

Chapter 13

#35.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gabriel Valencia Jr.

Represented By
Paul Y Lee

Joint Debtor(s):

Maricela Valencia

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-14190 Alfredo G Castro and Bibiana L Castro

Chapter 13

#36.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alfredo G Castro

Represented By
James T Lillard

Joint Debtor(s):

Bibiana L Castro

Represented By
James T Lillard

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Riverside
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Thursday, June 22, 2017

Hearing Room 303

12:30 PM

6:17-14292 Lubna Shiraz Ahmed

Chapter 13

#36.10 Motion to vacate dismissal

EH__

Docket 19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lubna Shiraz Ahmed

Represented By
Joshua L Sternberg

Movant(s):

Lubna Shiraz Ahmed

Represented By
Joshua L Sternberg

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:31 PM

6:13-19250 Robert B Eppley

Chapter 13

#37.00 CONT Trustee's Motion to Dismiss Case

From: 6/8/17

EH__

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert B Eppley

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:13-28595 Josue Luna and Fabiola Luna

Chapter 7

#38.00 Trustee's Motion to Dismiss Case

EH__

Docket 146

*** VACATED *** REASON: CASE CONVERTED TO CHAPTER 7
6/21/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Josue Luna

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Fabiola Luna

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:14-12676 Jimmie Lee Bracy, Jr.

Chapter 13

#39.00 CONT Trustee's Motion to Dismiss Case

From: 5/18/17

EH _____

Docket 118

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jimmie Lee Bracy Jr.

Represented By
Gregory M Shanfeld

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:14-22362 James Lange and Michelle Lange

Chapter 13

#40.00 CONT Trustee's Motion to Dismiss Case

From: 6/8/17

EH__

Docket 97

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/21/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Lange

Represented By
Michael Smith

Joint Debtor(s):

Michelle Lange

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:15-13352 Sortan Melvin Prior, Sr. and Janna Renee Prior

Chapter 13

#41.00 Trustee's Motion to Dismiss Case

EH__

Docket 94

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sortan Melvin Prior Sr.

Represented By
Jenny L Doling

Joint Debtor(s):

Janna Renee Prior

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:15-17476 Michael Brian Goodrich, Sr. and Kimberly JoAnn Carter

Chapter 13

#42.00 Trustee's Motion to Dismiss Case

EH__

Docket 147

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/15/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Brian Goodrich Sr.

Represented By
Christopher J Langley

Joint Debtor(s):

Kimberly JoAnn Carter

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:31 PM

6:15-19374 Edgardo Aranda and Kelley Aranda

Chapter 13

#43.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 64

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edgardo Aranda

Represented By
Paul Y Lee

Joint Debtor(s):

Kelley Aranda

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:15-22392 Donald Leroy Woodruff

Chapter 13

#44.00 Trustee's Motion to Dismiss Case

EH__

Docket 59

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/30/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald Leroy Woodruff

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:16-12893 Natalie G Massie

Chapter 13

#45.00 CONT Trustee's Motion to Dismiss Case

From: 6/1/17

EH__

Docket 41

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Natalie G Massie

Represented By
Kevin M Cortright

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:16-16616 Timothy Wade Jones

Chapter 13

#46.00 CONT Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

From: 6/8/17

EH__

Docket 36

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy Wade Jones

Represented By
Norma Duenas

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:16-16908 Oscar Chavez

Chapter 13

#47.00 CONT Trustee's Motion to Dismiss Case

From: 6/1/17

EH__

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oscar Chavez

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:16-17683 Cresencio Villamayor Irasusta, III and Jennifer P Irasusta Chapter 13

#48.00 CONT Motion for Order Dismissing Chapter 13 Case (Tax Returns / Refunds)

From: 4/27/17, 5/11/17, 6/8/17

EH__

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cresencio Villamayor Irasusta III

Represented By
Carey C Pickford

Joint Debtor(s):

Jennifer P Irasusta

Represented By
Carey C Pickford

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:16-18430 Isaias Melo and Rosa Melo

Chapter 13

#49.00 Trustee's Motion to Dismiss Case

EH__

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Isaias Melo

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Rosa Melo

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:16-18526 Ana M. Oliver

Chapter 13

#50.00 Trustee's Motion to Dismiss Case

EH__

Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ana M. Oliver

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:16-19919 Timothy Leonard Johnson

Chapter 13

#51.00 Trustee's Motion to Dismiss Case

EH__

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy Leonard Johnson

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:16-21232 Alejandro Salinas, Jr.

Chapter 13

#52.00 Trustee's Motion to Dismiss Case

EH__

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alejandro Salinas Jr.

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:17-10469 Joe Nathan Banks

Chapter 13

#53.00 Motion for Order Dismissing Chpater 13 Proceeding (Delinquency)

EH__

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joe Nathan Banks

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:17-10830 Juana Santiago

Chapter 13

#54.00 Trustee's Motion to Dismiss Case

EH__

Docket 31

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juana Santiago

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:17-10980 Jose Liborio Avila

Chapter 13

#55.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 20

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/31/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Liborio Avila

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:17-10981 Sandra Lorena Parra

Chapter 13

#56.00 Trustee's Motion to Dismiss Case

EH__

Docket 20

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/31/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sandra Lorena Parra

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:17-11030 Allison Laurie Merrifield

Chapter 13

#57.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allison Laurie Merrifield

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, June 22, 2017

Hearing Room 303

12:31 PM

6:17-11454 Dennis Wiley Donahoo and Catherine Lavern Fitch

Chapter 13

#58.00 Trustee's Motion to Dismiss Case

EH__

Docket 19

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dennis Wiley Donahoo

Represented By
Todd L Turoci

Joint Debtor(s):

Catherine Lavern Fitch

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, June 26, 2017

Hearing Room 303

2:00 PM

6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:09-01235 DIAMOND v. Empire Partners, Inc., a California Corporation et

**#1.00 CONT Status Conference re complaint
HOLDING DATE**

From: 3/6/13, 6/5/13, 9/11/13, 11/13/13,12/18/13, 2/5/14, 3/12/14, 4/9/14,
4/16/14, 5/21/14, 8/27/14, 8/28/14, 9/10/14, 9/29/14, 11/10/14, 11/19/14,
1/21/15, 1/28/15, 2/19/15, 3/24/15, 5/28/15, 6/23/15, 8/12/15, 9/18/15, 10/6/15,
12/8/15, 1/20/16, 2/18/16, 3/23/16, 4/5/16, 4/13/16, 4/22/16, 6/6/16, 7/25/16,
10/3/16, 11/14/16, 1/23/17, 2/27/17, 4/24/17

EH____

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/2/17 AT 3:00 P.M.**

Party Information

Debtor(s):

Empire Land, LLC

Represented By

James Stang

Robert M Saunders

Michael I Gottfried

----- O'melveny & Myers

Dean A Ziehl

Jonathan A Loeb

P Sabin Willett

Richard K Diamond (TR)

Jeffrey Rosenfeld

Defendant(s):

DOES 1 through 100, inclusive

Pro Se

Empire Partners, Inc., a California

Represented By

David Loughnot

Jonathan A Loeb

Jeffrey Rosenfeld

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, June 26, 2017

Hearing Room 303

2:00 PM

CONT... Empire Land, LLC

Chapter 7

Plaintiff(s):

RICHARD K. DIAMOND

Represented By

Richard S Berger

Michael I Gottfried

Aleksandra Zimonjic

Monica Rieder

John P Reitman

Peter M Bransten

Cynthia M Cohen

Roye Zur

Trustee(s):

Richard K Diamond (TR)

Represented By

Michael I Gottfried

Richard S Berger

Rodger M Landau

Richard K Diamond

Peter M Bransten

Aleksandra Zimonjic

Monica Rieder

Lisa N Nobles

Peter J Gurfein

Paul Hastings

Roye Zur

Amy Evans

Best Best & Krieger

Franklin C Adams

Thomas J Eastmond

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, June 26, 2017

Hearing Room 303

2:00 PM

6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:10-01319 DIAMOND v. Empire Partners, Inc., a California Corporation et

**#2.00 CONT Status Conference re complaint
HOLDING DATE**

From: 3/6/13, 6/5/13, 9/11/13, 11/13/13,12/18/13, 2/5/14, 3/12/14, 4/9/14,
4/16/14, 5/21/14, 8/27/14, 8/28/14, 9/10/14, 9/29/14, 11/10/14, 11/19/14,
01/21/15, 1/28/15, 2/19/15, 3/24/15, 5/28/15, 6/23/15, 8/12/15, 9/18/15, 10/6/15,
12/8/15, 1/20/16, 2/18/16, 3/23/16, 4/5/16, 4/13/16, 4/22/16, 6/6/16, 7/25/16,
10/3/16, 11/14/16, 1/23/17, 2/27/17, 4/24/17

EH____

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/2/17 AT 3:00 PM**

Party Information

Debtor(s):

Empire Land, LLC

Represented By
James Stang
Robert M Saunders
Michael I Gottfried
----- O'melveny & Myers
Dean A Ziehl
Jonathan A Loeb
P Sabin Willett
Richard K Diamond (TR)
Jeffrey Rosenfeld

Defendant(s):

Paul Roman

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

O'Melveny & Myers, LLP

Represented By
Howard Steinberg

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, June 26, 2017

Hearing Room 303

2:00 PM

CONT... Empire Land, LLC

Chapter 7

	P Sabin Willett
Peter T. Healy	Represented By Howard Steinberg P Sabin Willett
Neil M Miller	Represented By Jonathan A Loeb Jeffrey Rosenfeld P Sabin Willett
Empire Partners, Inc., a California	Represented By Jonathan A Loeb Jeffrey Rosenfeld P Sabin Willett
James P Previti	Represented By Jonathan A Loeb Jeffrey Rosenfeld P Sabin Willett
Larry Day	Represented By Jonathan A Loeb Jeffrey Rosenfeld P Sabin Willett

Plaintiff(s):

RICHARD K DIAMOND

Represented By
Richard S Berger
Peter M Bransten
John P Reitman
Michael I Gottfried
Aleksandra Zimonjic
Monica Rieder
Cynthia M Cohen
Roye Zur

Trustee(s):

Richard K Diamond (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, June 26, 2017

Hearing Room 303

2:00 PM

CONT... Empire Land, LLC

Chapter 7

Michael I Gottfried
Richard S Berger
Rodger M Landau
Richard K Diamond
Peter M Bransten
Aleksandra Zimonjic
Monica Rieder
Lisa N Nobles
Peter J Gurfein
Paul Hastings
Roye Zur
Amy Evans
Best Best & Krieger
Franklin C Adams
Thomas J Eastmond

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, June 26, 2017

Hearing Room 303

2:00 PM

6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:10-01329 DIAMOND v. Empire Partners, Inc., a California Corporation et

#3.00 CONT Status Conference re complaint
(Defendant - Empire Partners, Inc) HOLDING DATE

From: 3/6/13, 6/5/13, 9/11/13, 11/13/13,12/18/13, 2/5/14, 3/12/14, 4/9/14,
4/16/14, 5/21/14, 8/27/14, 8/28/14, 9/10/14, 9/29/14, 11/10/14, 11/19/14,
1/21/15, 1/28/15, 2/19/15, 3/24/15, 5/28/15, 6/23/15, 8/12/15, 9/18/15, 10/6/15,
12/8/15, 1/20/16, 2/18/16, 3/23/16, 4/5/16, 4/13/16, 4/22/16, 6/6/16, 7/25/16,
10/3/16, 11/14/16, 1/23/17, 2/27/17, 4/24/17

EH____

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/2/17 AT 3:00 P.M.**

Party Information

Debtor(s):

Empire Land, LLC

Represented By
James Stang
Robert M Saunders
Michael I Gottfried
----- O'melveny & Myers
Dean A Ziehl
Jonathan A Loeb
P Sabin Willett
Richard K Diamond (TR)
Jeffrey Rosenfeld

Defendant(s):

Previti Realty Fund, L.P.

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

The James Previti Family Trust

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, June 26, 2017

Hearing Room 303

2:00 PM

CONT... Empire Land, LLC

Chapter 7

Empire Partners, Inc., a California

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

James P Previti

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

Plaintiff(s):

RICHARD K DIAMOND

Represented By
Richard S Berger
Michael I Gottfried
Aleksandra Zimonjic
Monica Rieder
John P Reitman
Peter M Bransten
Cynthia M Cohen
Roye Zur

Trustee(s):

Richard K Diamond (TR)

Represented By
Michael I Gottfried
Richard S Berger
Rodger M Landau
Richard K Diamond
Peter M Bransten
Aleksandra Zimonjic
Monica Rieder
Lisa N Nobles
Peter J Gurfein
Paul Hastings
Roye Zur
Amy Evans
Best Best & Krieger
Franklin C Adams
Thomas J Eastmond

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

10:00 AM

6:12-21612 Amir El-Jamil McNeely and Veronica Guadalupe McNeely Chapter 13

#1.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2009 Nissan Altima 2.5 Sedan 4D

MOVANT: WESTLAKE FINANCIAL SERVICES

EH__

Docket 113

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 10:00 A.M.**

Party Information

Debtor(s):

Amir El-Jamil McNeely

Represented By
Steven A Alpert

Joint Debtor(s):

Veronica Guadalupe McNeely

Represented By
Steven A Alpert

Movant(s):

Westlake Financial Services

Represented By
Robert P Zahradka

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

10:00 AM

6:13-26277 Charles Frederick Biehl

Chapter 7

#2.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 3338 Tempe Dr Huntington Beach, CA 92649

MOVANT: BAYVIEW LOAN SERVICING LLC AS SERVICING AGENT FOR
M&T BANK

From: 1/24/17, 4/11/17, 4/25/17

EH__

Docket 162

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 10:00 AM**

Party Information

Debtor(s):

Charles Frederick Biehl

Represented By
Daryl L Binkley - DISBARRED -
Steven L Bryson

Movant(s):

Bayview Loan Servicing, LLC as

Represented By
Kristin A Zilberstein

Trustee(s):

John P Pringle (TR)

Represented By
James C Bastian Jr
Elyza P Eshaghi
Brandon J Iskander

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

10:00 AM

6:16-11745 Alfredo Manzo Arrieta and Mayte Hernandez- Arrieta

Chapter 13

#3.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 4057 East Hamilton Paseo, Ontario, CA 91761

MOVANT: WELLS FARGO BANK, N.A.

From: 5/30/17

EH__

Docket 98

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 10:00 A.M.**

Party Information

Debtor(s):

Alfredo Manzo Arrieta

Represented By
Andy C Warshaw

Joint Debtor(s):

Mayte Hernandez- Arrieta

Represented By
Andy C Warshaw

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

10:00 AM

6:16-15581 Dexter Humphrey

Chapter 13

#4.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1990 Scenic Ridge Rd. Chino Hills CA

MOVANT: WILMINGTON SAVINGS FUND SOCIETY

From: 5/16/17

EH__

Docket 39

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 10:00 A.M.**

Party Information

Debtor(s):

Dexter Humphrey

Represented By
Michael J Hemming

Movant(s):

Wilmington Savings Fund Society,

Represented By
Bonni S Mantovani
Diana Torres-Brito
Cassandra J Richey

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

10:00 AM

6:16-17724 Carlos Gutierrez and Josefina Gutierrez

Chapter 13

#5.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1553 N Granite Ave

MOVANT: WELLS FARGO BANK N.A.

EH__

Docket 34

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 10:00 AM**

Party Information

Debtor(s):

Carlos Gutierrez

Represented By
Patricia A Mireles

Joint Debtor(s):

Josefina Gutierrez

Represented By
Patricia A Mireles

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Kristin A Zilberstein

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

10:00 AM

6:16-20813 Thong Huu Nguyen

Chapter 13

#6.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 HONDA ACCORD, VIN: 1HGC R2F5 9EA0 37214

MOVANT: AMERICAN HONDA FINANCE CORPORATION

EH__

Docket 26

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 10:00 A.M.**

Party Information

Debtor(s):

Thong Huu Nguyen

Represented By
Yoon O Ham

Movant(s):

AMERICAN HONDA FINANCE

Represented By
Vincent V Frounjian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

10:00 AM

6:17-10688 John W Wells

Chapter 7

#7.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 34233 Larksbury Ct Lake Elsinore, CA 92532

MOVANT: U.S. BANK NATIONAL ASSOCIATION

EH__

Docket 27

*** VACATED *** REASON: CONTINUED TO 7/11/17 AT 10:00 AM

Party Information

Debtor(s):

John W Wells

Represented By
Daniel King

Movant(s):

U.S. BANK NATIONAL

Represented By
April Harriott
Sean C Ferry

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

10:00 AM

6:17-10769 Semone Ramone Monroe

Chapter 13

#8.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 32545 Machado St Lake Elsinore CA 92530

MOVANT: WELLS FARGO BANK NA

EH__

Docket 40

***** VACATED *** REASON: CONTINUED TO 8/29/17 AT 10:00 AM**

Party Information

Debtor(s):

Semone Ramone Monroe

Represented By
Jenny L Doling

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

10:00 AM

6:17-11095 Kayla Marie Rojas

Chapter 7

#9.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 135 Waterview St Playa Del Rey, CA 90293

MOVANT: DEUTSCHE BANK NATIONAL TRUST COMPANY

EH__

Docket 19

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 10:00 AM**

Party Information

Debtor(s):

Kayla Marie Rojas

Represented By
Kris Crawford

Movant(s):

DEUTSCHE BANK NATIONAL

Represented By
Angie M Marth

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

10:00 AM

6:17-11945 Leticia Olivares

Chapter 7

#10.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Kia Optima

MOVANT: WESCOM CREDIT UNION

EH__

Docket 12

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 10:00 A.M.**

Party Information

Debtor(s):

Leticia Olivares

Represented By
Paul Y Lee

Movant(s):

Wescom Credit Union

Represented By
Karel G Rocha

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

10:00 AM

6:17-12212 Cristian E Vargas

Chapter 7

#11.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 TOYOTA COROLLA, Vin: 5YFBURHE0GP388588

MOVANT: TOYOTA MOTOR CREDIT CORPORATION

EH__

Docket 13

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 10:00 A.M.**

Party Information

Debtor(s):

Cristian E Vargas

Pro Se

Movant(s):

Toyota Motor Credit Corporation

Represented By
Tyneia Merritt

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

10:00 AM

6:17-12568 Billy Joe Woodson and Kimra Lyn Woodson

Chapter 7

#12.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 FORD C-MAX

MOVANT: FORD MOTOR CREDIT COMPANY LLC

EH__

Docket 12

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 10:00 AM**

Party Information

Debtor(s):

Billy Joe Woodson

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Kimra Lyn Woodson

Represented By
Patricia M Ashcraft

Movant(s):

Ford Motor Credit Company LLC

Represented By
Sheryl K Ith

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

10:00 AM

6:17-13836 Hermelinda Diaz

Chapter 13

#13.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Re: 3865 VERMONT ST, SAN BERNARDINO, CA 92407 . , Motion for Relief from Co-Debtor Stay

MOVANT: WELLS FARGO BANK, N.A.

CASE DISMISSED 5/26/17

EH__

Docket 12

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 10:00 A.M.**

Party Information

Debtor(s):

Hermelinda Diaz

Pro Se

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Jason C Kolbe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

10:00 AM

6:17-14019 Osbaldo Concencion Martinez

Chapter 13

#14.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1567 Riverside Drive, Barstow, CA 92311; 860 Nancy St., Barstow, CA 92311; 36891 Livingston Ln., Hinkley, CA 92347; 26484 Highway #58, Barstow, CA 92311; 25494 Agate Rd., Barstow, CA 92311 Under 11 U.S.C. § 362 (with supporting declarations) (Real Property)

MOVANT: SAN BERNARDINO COUNTY TREASURER AND TAX COLLECTOR

From: 6/27/17

EH__

Docket 10

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 10:00 AM**

Party Information

Debtor(s):

Osbaldo Concencion Martinez Pro Se

Movant(s):

c/o Barry S. Glaser San Bernardino Represented By
Barry S Glaser

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

10:00 AM

6:17-14306 Jane R Mary Engel

Chapter 13

#15.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 42305 North Shore Drive, Fawnskin, CA 92333

MOVANT: ANDREW FONTI AND JANET R. FONTI

CASE DISMISSED 5/26/17

EH__

Docket 16

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 10:00 A.M.**

Party Information

Debtor(s):

Jane R Mary Engel

Represented By
Peter L Nisson

Movant(s):

Andrew Fonti, An Unmarried Man,

Represented By
Andrew J Miller

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#16.00 Motion By United States Trustee To Dismiss Or Convert Chapter 11 Case

EH__

Docket 266

*** VACATED *** REASON: CONTINUED TO 7/11/17 AT 2:00 P.M.

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

United States Trustee (RS)

Represented By
Michael J Bujold
Abram Feuerstein esq
Everett L Green

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#17.00 CONT First Omnibus Objection of Debtor-In-Possession Allied Injury Management, Inc. Seeking Disallowance of Certain Proofs of Claim

From: 11/8/16, 12/6/16, 1/10/17, 3/7/17,4/4/17, 4/25/17

EH__

Docket 83

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01279 Allied Injury Management, Inc. v. One Stop Multi-Specialty Medical Group

#18.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01279. Complaint by Allied Injury Management, Inc. against One Stop Multi-Specialty Medical Group & Therapy, Inc., One Stop Multi-Specialty Medical Group, Inc., Nor Cal Pain Management Medical Group, Inc.. (Charge To Estate). Complaint for (1) Breach of Contract; (2) Account Stated; and (3) Unjust Enrichment Nature of Suit: (14 (Recovery of money/property - other))

From: 1/24/17, 3/7/17, 4/25/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Nor Cal Pain Management Medical

Represented By
Maria K Pum
Maria C Armenta

One Stop Multi-Specialty Medical

Represented By
Maria K Pum
Maria C Armenta

One Stop Multi-Specialty Medical

Represented By
Maria K Pum
Maria C Armenta

Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

CONT... Allied Injury Management, Inc.

Chapter 11

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01238 Allied Injury Management, Inc. v. De La Llana et al

#19.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01238. Complaint by Allied Injury Management, Inc. against Sylvia De La Llana, Myelin Diagnostics, Sunkist Imaging Medical Center, Shoreline Medical Group, Inc., Paramount Family Health Center, Javier Torres, Justin Paquette, Nor Cal Pain Management Medical Group, Inc., One Stop Multi-Specialty Medical Group & Therapy, Inc.. (Charge To Estate). Complaint for Interpleader and Declaratory Relief Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy

From: 11/15/16, 12/6/16, 12/20/16, 2/28/17, 4/25/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 2:00 PM**

Party Information

Debtor(s):

Allied Injury Management, Inc.	Represented By Alan W Forsley
--------------------------------	----------------------------------

Defendant(s):

Justin Paquette	Pro Se
Javier Torres	Pro Se
One Stop Multi-Specialty Medical	Pro Se
Nor Cal Pain Management Medical	Pro Se
Paramount Family Health Center	Pro Se
Myelin Diagnostics	Pro Se
Sylvia De La Llana	Pro Se
Shoreline Medical Group, Inc.	Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

CONT... Allied Injury Management, Inc.

Chapter 11

Sunkist Imaging Medical Center

Pro Se

Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01238 Allied Injury Management, Inc. v. De La Llana et al

#20.00 Motion For Default Judgment Under LBR 7055-1 Against Defendants Sylvia De La Llana, M.D., an individual, and Myelin Diagnostics, LLC

EH__

Docket 65

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Justin Paquette

Pro Se

Javier Torres

Pro Se

One Stop Multi-Specialty Medical

Pro Se

Nor Cal Pain Management Medical

Pro Se

Paramount Family Health Center

Pro Se

Myelin Diagnostics

Pro Se

Sylvia De La Llana

Pro Se

Shoreline Medical Group, Inc.

Pro Se

Sunkist Imaging Medical Center

Pro Se

Movant(s):

David M. Goodrich

Represented By
Victor A Sahn
Jason Balitzer

Allied Injury Management, Inc.

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

CONT... Allied Injury Management, Inc.

Chapter 11

Alan W Forsley

Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01238 Allied Injury Management, Inc. v. De La Llana et al

#21.00 Motion For Default Judgment Under LBR 7055-1 Against Defendant Sunkist Imaging Medical Center

EH__

Docket 67

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 2:00 PM**

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Justin Paquette

Pro Se

Javier Torres

Pro Se

One Stop Multi-Specialty Medical

Pro Se

Nor Cal Pain Management Medical

Pro Se

Paramount Family Health Center

Pro Se

Myelin Diagnostics

Pro Se

Sylvia De La Llana

Pro Se

Shoreline Medical Group, Inc.

Pro Se

Sunkist Imaging Medical Center

Pro Se

Movant(s):

David M. Goodrich

Represented By
Victor A Sahn
Jason Balitzer

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

CONT... Allied Injury Management, Inc.

Chapter 11

Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01238 Allied Injury Management, Inc. v. De La Llana et al

#22.00 Motion For Default Judgment Under LBR 7055-1 Against Defendant Justin Paquette

EH__

Docket 69

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Justin Paquette

Pro Se

Javier Torres

Pro Se

One Stop Multi-Specialty Medical

Pro Se

Nor Cal Pain Management Medical

Pro Se

Paramount Family Health Center

Pro Se

Myelin Diagnostics

Pro Se

Sylvia De La Llana

Pro Se

Shoreline Medical Group, Inc.

Pro Se

Sunkist Imaging Medical Center

Pro Se

Movant(s):

David M. Goodrich

Represented By
Victor A Sahn
Jason Balitzer

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

CONT... Allied Injury Management, Inc.

Chapter 11

Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01238 Allied Injury Management, Inc. v. De La Llana et al

#23.00 Motion For Default Judgment Under LBR 7055-1 Against Defendant Dr. Javier Torres

EH__

Docket 71

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Justin Paquette

Pro Se

Javier Torres

Pro Se

One Stop Multi-Specialty Medical

Pro Se

Nor Cal Pain Management Medical

Pro Se

Paramount Family Health Center

Pro Se

Myelin Diagnostics

Pro Se

Sylvia De La Llana

Pro Se

Shoreline Medical Group, Inc.

Pro Se

Sunkist Imaging Medical Center

Pro Se

Movant(s):

David M. Goodrich

Represented By
Victor A Sahn
Jason Balitzer

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

CONT... Allied Injury Management, Inc.

Chapter 11

Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01238 Allied Injury Management, Inc. v. De La Llana et al

#24.00 Motion For Default Judgment Under LBR 7055-1 Against Defendant Shoreline Medical Group, Inc.

EH__

Docket 73

***** VACATED *** REASON: CONTINUED TO 7/11/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Justin Paquette

Pro Se

Javier Torres

Pro Se

One Stop Multi-Specialty Medical

Pro Se

Nor Cal Pain Management Medical

Pro Se

Paramount Family Health Center

Pro Se

Myelin Diagnostics

Pro Se

Sylvia De La Llana

Pro Se

Shoreline Medical Group, Inc.

Pro Se

Sunkist Imaging Medical Center

Pro Se

Movant(s):

David M. Goodrich

Represented By
Victor A Sahn
Jason Balitzer

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

CONT... Allied Injury Management, Inc.

Chapter 11

Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Tuesday, June 27, 2017

Hearing Room 303

2:00 PM

6:17-10171 TNC, Inc.

Chapter 11

#25.00 CONT Order (1) Setting Scheduling Hearing And Case Management Conference And (2) Requiring Status Report re Post Confirmation Status Conference

From: 2/14/17

EH__

Docket 4

*** VACATED *** REASON: CASE DISMISSED 5/17/17

Party Information

Debtor(s):

TNC, Inc.

Represented By
Stephen R Wade

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 28, 2017

Hearing Room 303

11:00 AM

6:11-15409 Manuel Edward Galvan and Irma Galvan

Chapter 7

#1.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 135

Tentative Ruling:

6/28/17

No opposition has been filed.
Service was Proper.

The applications for compensation of the Trustee, Counsel for the Trustee, and Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 4,750.00

Trustee Expenses: \$ 45.66

Attorney Fees: \$ 16,960

Attorney Costs:\$ 136.70

Accountant Fees:\$ 750.00

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Manuel Edward Galvan

Represented By
Dina Farhat

Joint Debtor(s):

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 28, 2017

Hearing Room 303

11:00 AM

CONT... Manuel Edward Galvan and Irma Galvan

Chapter 7

Irma Galvan

Represented By
Dina Farhat

Trustee(s):

Charles W Daff (TR)

Represented By
Reem J Bello

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 28, 2017

Hearing Room 303

11:00 AM

6:16-20696 Sylvia Estrada

Chapter 7

#2.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 23

Tentative Ruling:

6/28/17

No opposition has been filed.

Service was Proper in the circumstances

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 833.00

Trustee Expenses: \$ 85.02

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Sylvia Estrada

Represented By
Steven A Alpert

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 28, 2017

Hearing Room 303

11:00 AM

6:16-19720 Sylvia Guadalupe Esquerra

Chapter 7

#3.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 18

Tentative Ruling:

6/28/17

No opposition has been filed.

Service was Proper in the circumstances

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1,497.70

Trustee Expenses: \$ 77.88

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Sylvia Guadalupe Esquerra

Represented By
Steven A Alpert

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 28, 2017

Hearing Room 303

11:00 AM

6:16-17768 Dispatch Transportation LLC

Chapter 7

#4.00 CONT Motion for 2004 Examination -- Motion of USA Waste of California, Inc. for an Order Authorizing the Examination of Craig Johnson and the Issuance of Subpoenas Duces Tecum to Commodity Trucking Acquisition, LLC and Craig Johnson Pursuant to Fed.R. Bankr.P. 2004

FROM: 5/3/17, 5/17/17, 5/31/17

EH__

Docket 46

Tentative Ruling:

06/28/2017

BACKGROUND

On August 30, 2016 ("Petition Date"), Dispatch Transportation LLC ("Debtor") filed its petition for chapter 7 relief. Charles Daff is the duly appointed chapter 7 trustee ("Trustee").

On April 6, 2017, USA Waste of California, Inc. ("USA Waste") filed its Motion for an Order Authorizing the Examination of Craig Johnson and the Issuance of Subpoenas Duces Tecum to Commodity Trucking Acquisition, LLC ("CTA") and Craig Johnson Pursuant to Fed.R. Bankr.P. 2004 ("Motion"). USA Waste brings its Motion on the basis that it believes that the Debtor's case was filed in bad faith. Specifically, it appears that USA Waste believes the Debtor's asserts were transferred prepetition to CTA so that the Debtor could then file bankruptcy and discharge debts without having to liquidate its assets. In support, USA Waste asserts that CTA is run by the same managers, at the same location, with the same assets, and with representation of the same counsel as the Debtor.

The initially scheduled hearing was continued by stipulation of the parties and was subsequently continued by the Court to June 28, 2017. On May 3, 2017, oppositions to the Motion were filed by CTA and by Craig Johnson. A reply to the oppositions was filed on May 24, 2017.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 28, 2017

Hearing Room 303

11:00 AM

CONT... **Dispatch Transportation LLC**

Chapter 7

USA Waste asserts by its Motion that under the broad scope of FRBP 2004, examination of Craig Johnson and subpoena of records in CTA's and Craig Johnson's possession is justified because these parties have access to information that USA Waste requires to evaluate the Debtor's assets, liabilities, and prepetition activities in incurring the liabilities of the estate. (Motion at 3:25-28). Additionally, the initial Motion included a declaration from the Trustee indicating that he waived the Debtor's attorney-client privilege as to communications between the Debtor and Craig Johnson for purposes of the requested examinations. (Daff Decl. ¶3).

In opposition to the Motion, CTA generally asserts that the Motion should be denied because: (1) the Motion is moot because the Trustee retracted the waiver of the Debtor's attorney-client privilege with Mr. Johnson; (2) CTA obtained the Debtor's assets through a "commercially reasonable" Article 9 sale; (3) the Motion is itself only an attempt by USA Waste to obtain privileged information via the bankruptcy process that it could not otherwise obtain and use in connection with currently stayed state court litigation; (4) USA Waste is hoping to obtain privileged information in preparation for the filing of suit against CTA. The Court's Docket reflects that on May 3, 2017, the Trustee filed his Notice of Withdrawal of Waiver of Privilege. (Docket No. 59).

The Manning Pit dispute

In 2004, pursuant to a settlement agreement, the City of Irwindale was bound by a "Prioritization" provision which set forth the rules regarding which city quarries could be filled, when they could be filled, and by whom. In 2004, USA Waste obtained rights to fill a city quarry referred to by the parties as the "Arrow Pit". On or about 2007, the Debtor obtained a contract to fill a separate quarry – the "Manning Pit." A dispute subsequently arose about whether the Debtor's contract and work violated the Prioritization provision.

The Article 9 Sale

CTA alleges that it acquired the Debtor's assets via an Article 9 sale after the Debtor defaulted on debts owed to its first priority secured creditor, Comerica Bank. CTA asserts that Comerica effectuated a foreclosure sale on September 14, 2011 under Michigan law at which CTA was the buyer. CTA purchased the Debtor's assets for \$12 million, which included its equipment, trade names, business names, leases, contracts etc. CTA notes that the individuals who shared management or ownership interests in both the Debtor and CTA did so because they made capital contributions

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, June 28, 2017

Hearing Room 303

11:00 AM

CONT... Dispatch Transportation LLC

Chapter 7

for such interests. In support of their assertion that CTA's purchase of the Debtor's assets was proper, CTA and Mr. Johnson point to the decision of the San Bernardino Superior Court in which a different party attempted to bring suit against CTA as an alleged alter ego of the Debtor, and in which the Superior Court found no alter ego liability. This Court, however, notes that the decision of the Superior Court may have no preclusive effect in this case.

The Basis for USA Waste's claim against the Debtor

In 2013, USA Waste commenced a lawsuit against the Debtor for Intentional Interference with Contractual Relations and for Unfair Competition. Discover was conducted and a motion for summary judgment was filed by the Debtor which was denied by the trial court. The Superior Court scheduled trial for August 2016 but then trailed the trial to September 2016. The instant petition was filed on August 30, 2016 – staying USA Waste's litigation against the Debtor.

DISCUSSION

Bankruptcy Rule 2004 is a broadly construed discovery device which permits any party in interest in a bankruptcy proceeding to move for a court order to examine any entity so long as the examination relates to "acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed.R.Bankr.P. 2004(b). The scope of inquiry permitted under a Rule 2004 examination is generally very broad and can "legitimately be in the nature of a 'fishing expedition.'" *In re Wilcher*, 56 B.R. 428, 433 (Bankr.N.D.Ill.1985). Such an examination, however, cannot be " 'used for purposes of abuse or harassment' and it 'cannot stray into matters which are not relevant to the basic inquiry.'" *In re Table Talk*, 51 B.R. 143, 145 (Bankr.D.Mass.1985) (quoting *In re Mitco, Inc.*, 44 B.R. 35, 36 (Bankr.E.D.Wis.1984)). If the party to be examined makes a motion to quash a Rule 2004 subpoena, the examiner must show that there is good cause for taking the requested discovery. *In re Wilcher*, 56 B.R. at 434.

The Court now turns to its analysis of whether production and examination under Rule 2004 are warranted:

As to CTA, USA Waste specifically requests production of the following:

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 28, 2017

Hearing Room 303

11:00 AM

CONT... Dispatch Transportation LLC

Chapter 7

Request 1

"... all data storage devices, including hard drives, containing information or documents concerning the Manning Pit, any former assets of the Debtor that were acquired by CTA, and/or the division of CTA referred to as "Dispatch Transportation" by CTA or CTA's agents, employees or managers such as Kim Pugmire."

The Court disagrees with CTA's objection that the requested documents do not relate to the administration of the bankruptcy estate. Specifically, the information regarding the Manning Pit is directly related to USA Waste's claim in the Debtor's bankruptcy. The remaining request appears to concern USA Waste's contention that CTA and the Debtor colluded to shield assets from USA Waste and to prevent it from being able to establish its claim against the Debtor. On this point, based on the evidence in the record, it does not appear that the Superior Court's prior adjudication of the Article 9 sale issues precludes USA Waste from potentially asserting alter ego claims against CTA, and its officers/managers or owners in connection with the Debtor's bankruptcy case for the benefit of the estate's creditors. However, the Court is inclined to limit the request to providing copies of the relevant documents rather than requiring provision of actual devices or hard drives.

As to Craig Johnson, USA Waste requests:

Request 1

All e-mails or other documents (excluding those documents which are part of the public record of proceedings) that you authored, transmitted, or received on behalf of Debtor concerning USA Waste of California, Inc. v. City of Irwindale, et al., Los Angeles Superior Court Case No. KC066276

Request 2

All documents for which Debtor invoked the attorney-client privilege in USA Waste of California, Inc. v. City of Irwindale, et al., Los Angeles Superior Court Case No. KC066276 as reflected in the Privilege Log attached hereto as Exhibit A.

Request 3

All documents concerning the Manning Pit.

Request 4

All documents concerning the division of CTA referred to as "Dispatch

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Transportation" by CTA or CTA's agents, employees or managers such as Kim Pugmire.

As to Craig Johnson, the Court is unpersuaded that the Pugmire testimony constitutes a waiver of the attorney-client privilege. *Hernandez v. Tanninen*, 604 F.3d 1095, 1100 (9th Cir. 2010). Disclosing a privileged communication or raising a claim that requires disclosure of a protected communication results in waiver as to all other communications on the same subject. *United States v. Nobles*, 422 U.S. 225, 239-40, 95 S.Ct. 2160, 45 L.Ed.2d 141 (1975); *Weil v. Inv./Indicators, Research & Mgmt.*, 647 F.2d 18, 24 (9th Cir.1981) ("[V]oluntary disclosure of the content of a privileged attorney communication constitutes waiver of the privilege as to all other such communications on the same subject."); *Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th Cir.1992) ("Where a party raises a claim which in fairness requires disclosure of the protected communication, the privilege may be implicitly waived."). The Court, having reviewed Exhibit E of the Pugmire testimony, finds that Mr. Pugmire was asked and frequently responded to general questions regarding who was representing the Debtor as to specific transactions, to which he frequently made reference to Mr. Johnson. However, it is not clear from the general questioning that Mr. Pugmire ever uttered a statement that would specifically waive the attorney-client privileges attached to communications with Mr. Johnson. Moreover, the rule regarding waiver as to disclosed communications is limited to "communications on the same subject." *Nobles* at 439-40. However, here, USA Waste's examination requests are broad and include no limitations as to subject, or otherwise. At a minimum, to prevail USA Waste would need to point to each specific statement in the deposition testimony that it contends effectuates a privilege waiver and separately identify which subject is not protected by the privilege. Having failed to go through this exercise, the Court finds the general references to Mr. Johnson's representation and to Mr. Pugmire's general statements regarding his interactions with Mr. Johnson unpersuasive as a basis to conclude that there has been a waiver of the attorney-client privilege.

Based on the foregoing, the Court finds that USA Waste's Motion must be denied as to all requests made to Mr. Johnson to the extent that the attorney-client privilege is asserted, so specifically as to requests 1 and 2. However, the Court agrees that the third and fourth requests generally request information regarding the Manning Pit and CTA's "Dispatch Transportation" division, which appears relevant. Mr.

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Johnson is free to provide a privilege log in response.

TENTATIVE RULING

The Motion is GRANTED IN PART and DENIED IN PART.

GRANTED (but limited) as to USA Waste's request to CTA for documents related to the Manning Pit, and to documents related to CTA's purchase of the Debtor's assets.

DENIED as to USA Waste's 1st and 2nd requests to Craig Johnson, and GRANTED as to requests 3 and 4.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Dispatch Transportation LLC

Represented By
Leonard M Shulman
Elyza P Eshaghi

Movant(s):

USA Waste of California, Inc.

Represented By
Paul J Laurin

Trustee(s):

Charles W Daff (TR)

Represented By
Toan B Chung

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6:13-27863 Ronald Leroy Stearns and Alicia Gay Stearns

Chapter 7

#5.00 CONT Motion to Avoid Lien with Capitol One Bank USA NA

From: 5/17/17, 5/31/17

EH ____

Docket 29

Tentative Ruling:

6/28/17

This matter was continued from May 31, 2017, for Debtor to properly serve Capital One pursuant to Fed. R. Bankr. P. Rule 7004(h). Debtor's proof of service for the amended motion indicates service at:

"Capital One Bank N.A., Attn:63001-0125 Address: 15000 Capital One Drive, Richmond, VA 23238"

The above does not satisfy the standards of Fed. R. Bankr. P. Rule 7004(h).

APPEARANCES REQUIRED.

05/31/2017

BACKGROUND

On October 30, 2013 ("Petition Date"), Ronald and Alicia Stearns (collectively, "Debtors") filed their petition for chapter 7 relief. Among the assets of the estate is real property located at 7573 Honeysuckle Street in Fontana, CA 92336 (the "Property"). The Debtors received a discharge and the case was closed on February 11, 2014.

On January 10, 2017, the Court granted the Debtors' request to reopen the case

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for the purpose of avoiding judgment liens recorded against the Property. On February 2, 2017, the Debtor filed motions to avoid the liens of Capital One Bank ("Capital One") and Merchants Financial Guardian ("Merchants") pursuant to 11 U.S.C. § 522 (f). At the hearing on the Debtors initial motions, the Court denied both motions due to various technical issues with the motions. The tentative ruling indicated as follows:

The Court is inclined to DENY the motion without prejudice for a variety of technical reasons. Primarily, the filing that is actually set for hearing is Docket No. 17, which is simply a "notice" that does not attach, contain, incorporate, or reference a motion. Second, the earlier motion filed by Debtors, Docket No. 16, contains no admissible evidence regarding the value of the first lien as of the petition date. Third, the Court notes that Local Rule 4003-(2)(b)(1) prevents Debtors from bringing one motion to avoid two lines under 11 U.S.C. § 522(f). Fourth, the earlier motion contains multiple, material factual inconsistencies, including the amount of the claimed exemption and the fair market value of the property.

Tentative Ruling on Motion to Avoid Liens, March 29, 2017.

On April 21, 2017, the Debtors refiled their motions to avoid the liens of Capital One Bank and Merchants. On May 18, 2017, the Debtors withdrew their motion to avoid the lien of Merchants. The only motion currently pending is the motion to avoid the lien of Capital One Bank (the "Motion").

DISCUSSION

As a threshold matter, the Motion was not properly served on Capital One via FRBP 7004(h) which requires service on a FDIC insured entity via certified mail and to the attention of an officer at the address indicated for the institution on the FDIC website. The Debtors did not comply with any of these requirements for service.

Section 522(f)(1)(A) provides in relevant part: "the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled ... if such lien is (A) a judicial lien." 11 U.S.C. § 522(f)(1)(A) (emphasis supplied).

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Section 522(f)(2) prescribes a formula for calculating whether an exemption is impaired:

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

11 U.S.C. § 522(f)(2) (emphasis supplied). That is, an exemption is impaired if the sum of all of liens and the exemption yields a total that is greater than the fair market value of the property. *See In re Meyer*, 373 B.R. 84, 89 (9th Cir. BAP 2007).

Here, the Debtors assert that the first lien on the Property is \$173,433.90, that the Property is next encumbered by the lien of Merchants in the amount of \$48,351.02, and by the lien of Capital One in the amount of \$3,928.15. The Debtors have asserted an exemption in the Property of \$100,000. However, the Debtors Schedule C indicates that they have exempted \$76,566.10 in the Property and have not sought to amend their schedules. Nevertheless, assuming the values are correct, the total of the liens and exemption is \$302,279.17 which is greater than the fair market value of the Property of \$270,000 as asserted by the appraisal obtained by the Debtors. These figures would indicate that the lien of Capital One impairs the exemption of the Debtors.

TENTATIVE RULING

Based on the foregoing, the Court is inclined CONTINUE the hearing on the Motion to June 28, 2017, at 11:00 a.m., for the Debtor to properly serve Capital One per FRBP 7004(h) with an amended Notice of Motion and Motion as indicated above.

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APPEARANCES WAIVED. Movant to file and serve the amended notice of motion and motion.

Party Information

Debtor(s):

Ronald Leroy Stearns

Represented By
John F Mansour

Joint Debtor(s):

Alicia Gay Stearns

Represented By
John F Mansour

Movant(s):

Ronald Leroy Stearns

Represented By
John F Mansour

Trustee(s):

Lynda T. Bui (TR)

Pro Se

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6:13-13557 Michael Sevilla Santos and Maricar Domingo Santos

Chapter 7

#6.00 Motion RE: Objection to Claim Number 1 by Claimant Wescom Credit Union

Also #7

EH__

Docket 107

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/16/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Sevilla Santos

Represented By
Jeffrey B Smith

Joint Debtor(s):

Maricar Domingo Santos

Represented By
Jeffrey B Smith

Movant(s):

Larry D Simons (TR)

Represented By
Larry D Simons (TR)
Wesley H Avery

Trustee(s):

Larry D Simons (TR)

Represented By
Larry D Simons (TR)
Wesley H Avery

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6:13-13557 Michael Sevilla Santos and Maricar Domingo Santos

Chapter 7

#7.00 Motion RE: Objection to Claim Number 1 by Claimant Wescom Credit Union.

Also #6

EH__

Docket 110

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/21/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Sevilla Santos

Represented By
Jeffrey B Smith

Joint Debtor(s):

Maricar Domingo Santos

Represented By
Jeffrey B Smith

Movant(s):

Larry D Simons (TR)

Represented By
Larry D Simons (TR)
Wesley H Avery

Trustee(s):

Larry D Simons (TR)

Represented By
Larry D Simons (TR)
Wesley H Avery

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6:17-12976 Modern Properties, LLC

Chapter 7

#8.00 CONT Motion to Vacate Dismissal of Case

From: 6/7/17

EH__

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Modern Properties, LLC

Represented By
Robert L Firth

Movant(s):

Larry D Simons (TR)

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

#9.00 CONT Motion to Approve Compromise Under Rule 9019 Filed Jointly by Chapter 7 Trustee and Revere Financial Corporation to Approve Settlement Contract Between Chapter 7 Trustee and Revere Financial Corporation

From: 3/1/17, 5/3/17, 6/14/17

Also #10 - #13

EH__

Docket 440

Tentative Ruling:

6/28/17

See tentative for matter #10.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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#10.00 Motion for Approval of Compromise Between Trustee and OIC Medical Corporation, Liberty Orthopedic Corporation, and Universal Orthopaedic Group

Also #9 - #13

EH__

Docket 318

Tentative Ruling:

06/28/2017

PROCEDURAL BACKGROUND

On October 20, 2013, Douglas Jay Roger, MD, Inc., ("Debtor") filed a Chapter 7 voluntary petition. On October 20, 2015, Trustee filed two complaints. The first complaint ("First Complaint") named OIC Medical Corp. ("OIC"), Liberty Orthopedic Corp. ("LOC"), and University Orthopaedic Group ("UOG") as defendants, and was for avoidance, recovery, and preservation of preferential and fraudulent transfers. The second complaint ("Second Complaint") named Douglas J. Roger, M.D., Inc. Defined Benefit Plan ("DJRI Benefit Plan") (OIC, LOC, UOG, and DJRI Benefit Plan, collectively, "Defendants") as defendant, and also was for avoidance, recovery, and preservation of preferential transfers.

On April 6, 2016, the Trustee filed two motions to approve compromise (collectively, the "Original Compromise Motions"), corresponding to the two complaints identified above. On April 18, 2016, Kajan Mather & Barish ("KMB") filed oppositions to the motions for compromise. On April 25, 2016, Revere Financial Corporation ("Revere") filed objections to the motions for compromise, joining the opposition of KMB. On May 4, 2016, Trustee filed replies to KMB's oppositions and Revere's objections. On May 9, 2016, KMB withdrew its opposition.

On May 11, 2016, a hearing was held on the matter, however, based on the representations of the parties, the hearing was continued. On May 25, 2016,

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Defendants filed joinders in the motions for compromise. The hearing was repeatedly continued to allow for discussions between Trustee and Revere.

On November 5, 2016, Defendants filed motions to enforce their respective settlement agreements with Trustee (collectively, the "Enforcement Motions"). Nevertheless, the Original Compromise Motions and the Enforcement Motions were again continued by stipulation.

On January 18, 2017, Revere filed oppositions to the motions to enforce, and Trustee joined in the oppositions. On January 19, 2017, KMB filed joinders to the motions to enforce.

On January 31, 2017, Revere and Trustee filed a joint motion to approve a settlement between Trustee and Revere (the "New Compromise Motion"). On February 1, 2017, hearings were held on the Original Compromise Motions and the Enforcement Motions. In light of the New Compromise Motion, the Court continued the matter.

On February 14, 2017, Bank of Southern California, N.A. ("BSC") filed an objection to the New Compromise Motion. On June 14, 2017, Defendants and KMB filed separate oppositions to the New Compromise Motion. On June 21, 2017, Revere filed a reply in support of the New Compromise Motion.

FACTUAL BACKGROUND

There are two distinct settlement motions under consideration: (1) the New Compromise Motion; and (2) the Original Compromise Motions (and the corresponding Enforcement Motions).

A. New Compromise Motions

The New Compromise Motion¹ creates four categories of assets: (1) cash held by Trustee and in which Revere claims a security interest; (2) cash currently held by Revere, previously distributed by Trustee; (3) tax refunds; and (4) claims. Revere proposes to grant a carve-out of 100 percent of category one (\$183,480.95) and \$43,493 in category two, totaling \$226,973.95, in addition to a carve out of any tax refunds.

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In return, the settlement agreement provides that Trustee will agree to allow Revere a claim of \$5,500,000.00, of which \$4,000,000.00 will be treated as secured. Trustee also waives the right to challenge the validity or priority of Revere's security interest, and abandons any remaining interest in Revere's collateral. Revere is also granted the right to prosecute all claims owned by the bankruptcy estate that are not prosecuted by the Trustee or the contemplated liquidating trustee, and Revere is granted relief from stay to prosecute all such actions.

The settlement agreement contemplates the creation of a liquidating trust. As part of the creation of such a trust, the Trustee is to withdraw from all pending settlements for avoidance actions. Revere (or its nominee) will act as trustee of the liquidating trust. The rights to pursue Debtor's causes of action will be assigned to the liquidating trust, and Revere will have full discretion to determine which claims to pursue. Revere will cover the costs incurred by the liquidating trust. With some caveats, any proceeds recovered by the liquidating trust will be split 75/25 between Revere and the bankruptcy estate.

The settlement agreement also contains a clause that it is voidable if it not approved as is.

B. Original Compromise Motions

The Original Compromise Motions consist of two separate compromises: (1) a compromise with OIC, LOC, and UOG; and (2) a compromise with DJRI Benefit Plan. The first compromise contemplated Trustee dismissing adversary proceeding 6:15-1307 in return for \$30,000. The second compromise contemplated Trustee dismissing adversary proceeding 6:15-1309 in return for \$50,000.

DISCUSSION

I. Legal Standard for Approving Compromise

Rule 9019(a) authorizes the bankruptcy court to approve a compromise or settlement on the trustee's motion and after notice and a hearing. The bankruptcy court must

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consider all "factors relevant to a full and fair assessment of the wisdom of the proposed compromise." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424, 88 S. Ct. 1157, 20 L. Ed. 2d 1 (1968). In other words, the bankruptcy court must find that the settlement is "fair and equitable" in order to approve it. *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986).

In conducting this inquiry, the bankruptcy court must consider the following factors:

- (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id.

The bankruptcy court enjoys broad discretion in approving a compromise because it "is uniquely situated to consider the equities and reasonableness [of it]" *United States v. Alaska Nat'l Bank (In re Walsh Construction, Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). As stated in *A & C Props.*:

The purpose of a compromise agreement is to allow the trustee and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims. The law favors compromise and not litigation for its own sake, and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision must be affirmed.

Id. (citations omitted).

On the other hand, even though the bankruptcy court has wide latitude in approving compromises, its discretion is not completely unfettered. See *Woodson v. Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). The trustee bears the burden of proving to the bankruptcy court that the settlement is fair and equitable

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and should be approved. *In re A&C Props.*, 784 F.2d at 1382.

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The Court shall first apply the *A&C* factors to the Original Compromise Motion in isolation.

A. The OIC, LOC, and UOG Compromise

1. The Probability of Success in the Underlying Litigation

The record is neutral as to the probability of success. In particular, the Trustee has identified the arguments being made by OIC, LOC and UOG in defense of the avoidance actions but has provided scant information with which to gauge the strength of the respective positions. This factor is neutral.

2. Difficulty of Collection

The Trustee's Supplemental Declaration provides strong evidence underscoring the potential difficulty in collecting from OIC or LOC. In particular, the Trustee has determined that these entities are no longer going concerns and have no assets. This factor favors settlement.

3. Complexity, Cost, Inconvenience and Delay of Litigation

The difficulty in collection against OIC and LOC leaves UOG as the primary means for collection of any judgment. The action against UOG would require the Trustee to establish successor/alter ego liability. The Trustee concedes, however, that there is no evidence showing that any assets or customers were transferred to UOG from OIC, and UOG has indicated it acquired its contracts through a professional service. Further, the Trustee indicated that many of the transfers originally alleged to have been recoverable are either duplicative, were paid out on behalf of the Debtor by OIC, or were not paid by the Debtor to OIC at all, such that the remaining amount of the approximately \$1.1 million is approximately \$600,000. Based on this information, the Trustee has demonstrated that the complexity and costs of litigation weigh in favor of settlement.

4. Interest of Creditors

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Based on the Trustee's representation that the cost of litigation is likely to exceed any additional benefit to the Estate, the Trustee has established that settlement is in the best interests of creditors. This factor weighs in favor of settlement.

B. The DJRI Benefit Plan Compromise

1. The Probability of Success in the Underlying Litigation

The Trustee has provided evidence that success was predicated on a showing that DJRI Benefit Plan was an insider of the Debtor, and that DJRI Benefit Plan raised credible arguments to contest such a showing. This factor weighs in favor of settlement.

2. Difficulty of Collection

There are no specifics provided to indicate that collection would be particularly difficult. This factor is neutral.

3. Complexity, Cost, Inconvenience and Delay of Litigation

There is insufficient information provided to indicate that the litigation would be more complex, costly or inconvenient than what is customary. This factor is neutral.

4. Interest of Creditors

Based on the Trustee's representation that DJRI Benefit Plan possesses strong arguments diminishing the probability of success for the Trustee, coupled with the certainty of the Estate receiving \$50,000 for the benefit of the estate through this settlement, the settlement appears to be fair and equitable. This factor weighs in favor of settlement.

II. Motions to Enforce & the New Compromise

Defendants filed motions to enforce the settlement and requested that the court grant

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the motions to compromise. Defendants contend that the settlement agreement constitutes a valid contract, that the contract is valid unless the court rejects it, and that Revere's involvement in the proceedings is for the purpose of harassment and to increase attorney's fees. Revere responded by contending that the settlement agreement does not constitute a valid contract, that Trustee can sell the adversary, and that Trustee has a duty to consider higher bids. Additionally, Revere has essentially offered its own bid by filing the New Compromise Motion.

Regarding, Revere's contention that Trustee has the ability to sell or assign an avoidance action to a creditor, the Courts findings that *In re P.R.T.C., Inc.*, 177 F.3d 774, 781 (9th Cir. 1999) and *In re Prof'l Inv. Props. of Am.*, 955 F.2d 623, 625 (9th Cir. 1992) support Revere's contention that the avoidance actions can be assigned. The limitations arguably imposed by these line of cases, that the assignment(s) occur pursuant to a plan of reorganization, or when a creditor is pursuing interests common to all creditors, does not bar assignment of the avoidance actions at issue, since the recovery of preferential or fraudulent transfers is an interest common to all creditors.

While Defendants raise a variety of arguments against the New Compromise Motion in their opposition, there is no contention that Trustee lacks the legal authority to transfer the avoidance action.

KMB has objected that the proposed assignment is legally prohibited, but its argument is largely inaccurate. Citing *In re Lahjani*, 325 B.R. 282, 285 (B.A.P. 9th Cir. 2005), KMB asserts that there are three requirements for such a sale, and then argues that two of those requirements have not been met. First, KMB argues that the sale must be for a sum certain. While KMB allots one page to a subsection on this argument, there is no authority justifying the assertion. While *Lahjani* stated that "trustee avoiding powers may be transferred for a sum certain," it did not impose such a requirement, and the case it cited with regards to the statement, *In re P.R.T.C., Inc.*, 177 F.3d 781-82, did not mention such a requirement. *Id.* Therefore, the Court declines to read this statement by *Lahjani* as imposing a requirement. Likewise, KMB argues that that the assignment must benefit the entire estate. While it is true that such an assignment must benefit the estate, this argument does not assist the Court's analysis since if there is no benefit to the estate, the New Compromise Motion will clearly not be considered an "overbid."

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A more novel and complex issue is presented by the process that has led to the proposed assignment of the avoidance actions. Specifically, Trustee entered into a settlement with Defendants that would have resolved the actions, Defendants moved to enforce the actions, then Trustee entered into a second settlement, this time with Revere. To complicate matters further, the second settlement is much more expansive in the rights it affects.

First, as is noted by Defendants, the Court must approve the compromise of a claim before the agreement becomes enforceable. *See* Fed. R. Bankr. P. Rule 9019. Nevertheless, there is case law that concludes Trustee does not have authority to unilaterally repudiate the settlement agreement. *See, e.g., In re Seminole Walls & Ceilings Corp.* 388 B.R. 386, 391-96 (Bankr. M.D. Fla. 2008) ("To the extent there is a split of authority, the Court finds the better-reasoned view is that the parties to a settlement agreement may not unilaterally repudiate it after approval of it has been sought pursuant to Rule 9019.") (collecting cases). The fact that Trustee cannot repudiate the settlement agreement does not mean that the Trustee must continue to actively support the agreement. *See, e.g., In re Martin* 91 F.3d 389, 394 (3rd Cir. 1996) ("The trustee may even opt not to argue in favor of the stipulation, as was done here, if she no longer believes the settlement to be in the best interest of the estate."). But the Court, nevertheless, has the authority to approve the settlement agreement over a trustee's objection. *See id.* ("The trustee does not breach any term of the stipulation by [not supporting the agreement], for the bankruptcy court may nonetheless approve the settlement.").

As argued by Revere, however, the Court must consider preferable alternative offers, despite the Original Compromise Motions. Revere primarily cites to *In re Mickey Thompson Entm't Group*, a case which stated:

We agree with the Third Circuit that the disposition by way of 'compromise' of a claim that is an asset of the estate is the equivalent of a sale of the intangible property represented by the claim, which transaction simultaneously implicates the 'sale' provisions under section 363 as implemented by Rule 6004 and the 'compromise procedure of Rule 9019(a).

292 B.R. 415, 421 (B.A.P. 9th Cir. 2003). By analogizing the Original Compromise Motions to sale motions, Revere is arguing that the proposed compromise be

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compared to other bids, instead of merely being compared to continuation of the underlying litigation. *See, e.g., id.* at 421-22 ("When confronted with a motion to approve a settlement under Rule 9019(a), a bankruptcy court is obliged to consider, as part of the 'fair and equitable' analysis, whether any property of the estate that would be disposed of in connection with the settlement might draw a higher price through a competitive process and be the proper subject of a section 363 sale. . . . The possibility that someone else may be willing to pay a higher price triggers the prospect of an auction that could yield an even higher price."). Nevertheless, the Court must be able to ascertain that the New Compromise Motion offered by Revere actually constitutes an overbid.

III. Comparison of the Original Compromise & the New Compromise

The majority of the briefing has, directly or indirectly, related to whether Revere has, in fact, tendered an overbid. As the Court said towards the beginning of the most recent hearing on the matter, on February 1, 2017:

Those [the Original Compromise Motions] were done I want to say nine, ten months ago, and then the motion was filed maybe seven, eight months ago roughly, and there's been all this delay, and then less than 24 hours ago we get a massive stack of a new settlement from the Trustee and Revere that I think everyone would agree is very much not apples to apples. We're now apples to oranges.

My preference would be, I mean, so much of this is coming very late. My preference would be that really given the time that's passed and this, we'll call it speculative nature of that new settlement, which I did not digest other than a very quick review, and it's certainly far more complex than what was initially proposed, was really just to open up the pending motions to overbidder, and the, I was involved the *Mickey Thompson* case. I do believe that 9019 is subject to a 363 overbidding. I think that's the right result. I'm not saying that a trustee can never, or a party can never, counter a straight dollar bid with a different more complex bid, and that's certainly in the Trustee's discretion or largely in the Trustee's discretion, but these circumstances are a little bit different. There's been such a passage of time, and the new settlement is so complex and speculative related to what's here, and as a backdrop against this,

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given the administrative expenses, I'm not comfortable that there's going to be anything for anyone under any of these scenarios. So I feel the cleanest way is just to open up the pending settlement and if Revere believes they're worth more, that's fine. I understand the settlement is more expansive than that. The settlement can be revised to carve those out.

[Dkt. #454, p. 5-6]. In addition to the Court's concern regarding the disparate nature of the New Compromise Motion compared to the Original Compromise Motions, the following concerns were among those raised at the hearing on February 1, 2017: (1) that the settlement agreement provided that it was voidable if modified by the Court; and (2) that the nature, extent, and priority of Revere's lien, from which a carve-out was to be granted, were possibly subject to disputed. The Court later expressed its concerns to the parties regarding the operation of § 550 if Revere was successful in an avoidance action. The opposition of KMB and Defendants have largely questioned the value of Revere's "overbid," and KMB has asserted that the Court does not have adequate information to compare the settlements.

Therefore, the Court must engage in the following two-step analysis: (1) does the New Compromise offer more value than the Original Compromise Motions; and (2) do concessions made to Revere in the New Compromise Motion sufficiently reduce the value provided by Revere as to prevent the New Compromise Motion from being an overbid.

There are also two secondary considerations that inform the Court's deliberations. First, as noted by KMB, in making its determination, the Court must be presented with sufficient evidence to formulate an informed and intelligent opinion. Nevertheless, as noted by Revere, the Court should not conduct a mini-trial on every disputed issue, for that would eliminate the utility of a settlement altogether.

Second, the Court is cognizant of the uniqueness of this situation. On one hand, the primary opposition to the New Compromise Motion comes from the Defendants, parties whose interest, if not exactly adverse to, are certainly not synonymous with the interests of the estate. On the other hand, if the New Compromise Motion provides a much greater benefit to the estate, as Revere contends, then it should have been relatively simple to bifurcate the New Compromise Motion to create two agreement: (1) an overbid on the subject matter of the Original Compromise Motions; and (2) a

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settlement governing the remainder of the material in the New Compromise Motion. Yet, despite exhortations from the Court to that effect at the hearing on February 1, 2017, Revere has declined to adjust its position. This is even more concerning because the Court expressed skepticism regarding the characterization of the New Compromise Motion as an "overbid" at the hearing on February 1, 2017, then, later, expressed additional concerns that made the New Compromise Motion even less palatable, yet Revere has offered no clear response to the issues raised by the Court.

Returning to the two-step analysis identified above, the first consideration for the Court is to address the proposed Revere "carve-out." Importantly, if this "carve-out" was instead cash, the analysis today would be simpler. Therefore, the Court must consider why this distinction is important, and determine the consequences of the distinction. As noted in page 8 of Defendants' opposition, there are two concerns in this respect: (1) whether Revere actually has a security interest in the carve-out funds; and (2) whether there is a senior security interest in those funds. Regarding the latter, page 7 of Revere's reply appears to contain a warranty that if there is a senior secured interest, then Revere will provide funds to replace any value lost to the estate.² This would appear to eliminate concerns regarding the priority of Revere's security interest in the carve-out, if any. Regarding the former, a cursory review of Revere's proof of claim (claim #11), establishes that Revere contends that it has a blanket lien on Debtor's assets. The only remaining dispute would be whether the underlying security agreement is valid and enforceable against the estate. If it is, assuming the Court's interpretation of Revere's guarantee, outlined in footnote 1, is correct, it would appear that Revere has demonstrated it is offering more value than offered in the Original Compromise Motions.

But Revere is also requesting more in return. Specifically, not only would the avoidance actions underlying the Original Compromise Motions be assigned to a liquidating trust controlled by Revere, but all causes of action would be assigned. Specifically, the New Compromise Motion, at § 4.25, defines "liquidating trust assets" as:

all causes of action, claims, choses in action, and any rights of recovery whatsoever that the DJRI Estate now owns or owns in the future, except the tax attributes of DJRI.

The New Compromise Motion also states that the Trustee will allow Revere a

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\$5,500,000 claim, of which \$4,000,000 will be treated as secured. Additionally, the New Compromise Motion states that the Trustee will not contest the validity, perfection, and scope of the DJRI Security Agreement. Furthermore, the agreement provides that the Trustee grants Revere relief from stay to prosecute any claims of the bankruptcy estate, as well as Revere's state-court action. Ultimately these three assets concessions are summarized as follows: (1) Revere's claim is fixed at a certain amount; (2) all recovery rights of Trustee are assigned to a liquidating trust controlled by Revere; and (3) Revere has full freedom to prosecute any claims of the estate.

Regarding the fixing of Revere's claim, Revere filed proof of claim number 11 which makes the contradictory statements that the amount of the claim is \$2,935,429.17, that the secured claim is \$4,768,638.29, and that the unsecured claim is \$805,354.20. While not objected to in the instant case, a similar and overlapping claim was filed in Debtor's principal's individual case, and is currently subject to a claim objection. Trustee's claim objection requested that the Court reduce the claim to \$527,910, and hold an evidentiary hearing to determine how much of the claim is secured. While Trustee's objection was withdrawn after reaching a resolution with Revere, the claim remains subject to dispute due to an objection filed by Debtor. While Debtor, or any other party, would appear to maintain the right to object to Revere's claim, the New Compromise Motion, by its terms, appears to attempt to give Revere a blanket, first priority lien over all the estate's assets by attempting to provide an adequate protection lien that relates back to 2007.

Second, regarding the prosecution of actions through the utilization of a liquidating trust, the open-ended nature of the settlement makes a valuation of such a right inherently speculative. The Court lacks sufficient evidence that would enable the formation of even a rough estimate.

Third, the blanket grant of relief from stay presents problems. For instance, the New Compromise Motion, at the first sentence of § III.A.3.d, states: "[t]he liquidating trustee has full discretion to decide which Liquidating Trust Assets to investigate, which Liquidating Trust Assets to advance litigation expenses/costs to pursue, and which Liquidating Trust Assets to liquidate." Then, the second clause of § III.B.8 states: "[t]he DJRI Trustee grants RFC relief from stay to prosecute all claims that the bankruptcy estate owns and that neither the Liquidating Trustee nor the DJRI Trustee choose to prosecute." These two statements, read in conjunction³, appear to indicate

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that Revere, in its unlimited discretion, would have the contractual right to decline to bring any actions through the liquidating trust, and then bring any action, in bankruptcy or state court, in its own name. In such a situation, the result would be that the Trustee agrees to receive \$226,973.95 (all of which would likely go towards administrative claims, since, at the previous hearing, Trustee's counsel stated its fees were already over \$400,000) in return for essentially abdicating its role as Trustee, while Revere would, for all intents and purposes, own Debtor. Essentially, the result would be that Revere purchased Debtor from Trustee.

Ignoring the myriad potential problems with the above scenario, the situation illustrates the dilemma at issue here. Given the unwieldy administrative claims in this case, in order for there to be any distribution to unsecured creditors, Revere would have to recover, at a minimum, in excess of approximately \$1,000,000. If such an amount were recovered, the New Compromise Motion would represent a great bargain for Revere, and Revere would easily recoup its cost. If such an amount is not recovered, then the unsecured creditors other than Revere will not be paid a penny, which reflects Revere's apparent leverage over Trustee under the settlement. And, ultimately, the question becomes, what is being given up by Revere in the New Compromise Motion? A carve-out, representing approximately 5% of the collateral, based on a security agreement which is in dispute, a dispute the settlement attempts to close the door on.

While Revere, citing *Lahijani*, contends that the Court should estimate the value of each component of the New Compromise Motion, and that an "apples to oranges" overbid should be considered, the Court requires evidence upon which it can formulate an informed, intelligent estimate of the value of the different components. Here, the comprehensive and complicated nature of the settlement precludes such an estimate. While the Court acknowledges that it could attempt to evaluate an "apples to oranges" overbid, that is not what has been presented. Instead, the New Compromise Motion constitutes an "apples to kangaroos" overbid.

Finally, while Revere contends that deference to Trustee's business judgment is necessary, the Court's standard approach to settlement agreements is altered by the line of reasoning expressed in *In re Seminole Walls & Ceilings Corp.* 388 B.R. 386, 391-96 (Bankr. M.D. Fla. 2008). The Court concludes that, rather than simply deferring to Trustee's business judgment, the Court must determine whether the New

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Compromise Motion constitutes an overbid compared to the Original Compromise Motions. And, on the record before the Court, such a determination is infeasible.

Nevertheless, as the Court expressed at the previous hearing, if the New Compromise Motion is so clearly more beneficial to the bankruptcy estate than the Original Compromise Motions, Revere should have no trouble bifurcating the agreement to produce an overbid, and a remainder agreement, the latter of which, in the absence of a pre-existing competing settlement, would be assessed under the default, general Fed. R. Bankr. P. Rule 9019 standards. Therefore, the Court is inclined to schedule an auction to allow Revere to overbid on the adversary proceedings related to the Original Compromise Motions. While such an overbid need not necessarily come in the form of "apples to apples," "apples to kangaroos" will be subject to the same concerns repeatedly expressed by the Court.

TENTATIVE RULING

Subject to discussion from the parties, the Court is inclined to schedule an auction.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

Trustee(s):

Arturo Cisneros (TR)

Represented By

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Chad V Haes

D Edward Hays

Franklin R Fraley Jr

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

#11.00 Motion for Approval of Compromise Between Trustee and Douglas J. Roger, MD, Inc. Define Benefit Plan

Also #9 - #13

EH__

Docket 320

Tentative Ruling:

6/28/17

See tentative for matter #10.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

#12.00 Motion to Approve Compromise Under Rule 9019 and Enforce the Settlement Agreement Between the Chapter 7 Trustee and OIC Medical Corporation, Liberty Orthopedic, and Universal Orthopaedic Group

Also #9 - #13

EH__

Docket 404

Tentative Ruling:

6/28/17

See tentative for matter #10.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

OIC Medical Corporation

Represented By
Summer M Shaw

LIBERTY ORTHOPEDIC

Represented By
Summer M Shaw

UNIVERSAL ORTHOPAEDIC

Represented By
Summer M Shaw

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes

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Douglas J Roger, MD, Inc., A Professional Corporat

D Edward Hays

Franklin R Fraley Jr

Chapter 7

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Chapter 7

#13.00 Motion to Approve Compromise Under Rule 9019 and Enforce the Settlement Agreement Between the Chapter 7 Trustee and OIC Medical Corporation, Liberty Orthopedic, and Universal Orthopaedic Group

Also #9 - #12

EH__

Docket 403

Tentative Ruling:

6/28/17

See tentative for matter #10.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

Douglas J Roger, MD, Inc. Defined

Represented By
Summer M Shaw

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Adv#: 6:15-01304 Cisneros v. Kajan Mather & Barish, a professional corporation

#14.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01304. Complaint by A. Cisneros against Kajan Mather & Barish, a professional corporation, MATHER KUWADA, a limited liability partnership, MATHER LAW CORPORATION, a California corporation, LAW OFFICE OF KENNETH M. BARISH, Steven R. Mather, Kenneth M. Barish. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 1/13/16, 3/30/16, 4/6/16, 5/4/16, 5/25/16, 9/28/16, 11/2/16, 11/9/16, 12/14/16, 1/11/17, 5/17/17, 6/7/17

EH__

Docket 1

Tentative Ruling:

12/14/2016

The instant Status Conference is CONTINUED to January 11, 2017, at 2:00 p.m., to be heard in conjunction with Defendants' Motion for Summary Judgment

APPEARANCES WAIVED.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

Steven R. Mather

Pro Se

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Kenneth M. Barish

Pro Se

MATHER LAW CORPORATION,

Represented By
Michael S Kogan

Kajan Mather & Barish, a

Represented By
Michael S Kogan

MATHER KUWADA, a limited

Represented By
Michael S Kogan

Plaintiff(s):

A. Cisneros

Represented By
D Edward Hays
Chad V Haes
Franklin R Fraley Jr
Sue-Ann L Tran
Jasmine W Wetherell

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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6:13-27611 Douglas Jay Roger

Chapter 7

#15.00 CONT Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Jerry Wang, State Court Receiver
(Holding date)

MOVANT: JERRY WANG, STATE COURT RECEIVER

From: 12/3/14, 12/15/14, 1/28/15, 4/15/15, 7/22/15, 9/23/15, 1/27/16, 6/29/16, 9/28/16, 11/16/16, 2/1/17, 2/16/17, 5/3/17, 6/14/17

Also #16

EH__

Docket 423

*** VACATED *** REASON: WITHDRAWAL FILED 6/27/17

Tentative Ruling:

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Movant(s):

Jerry Wang, Duly-Appointed State

Represented By
Jeffrey K Garfinkle
Anthony J Napolitano

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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Chapter 7

**#16.00 CONT Objection to Claim #17 by Revere Financial Corporation
(Holding date)**

From: 10/1/14, 11/5/14, 12/3/14, 12/15/14, 1/28/15, 4/15/15, 7/22/15, 9/23/15,
10/21/15, 11/18/15, 12/16/15, 1/13/16, 3/2/16, 5/4/16, 6/1/16, 9/28/16, 11/16/16,
2/1/17, 2/16/17, 5/3/17, 6/14/17

Also #15

EH____

Docket 333

Tentative Ruling:

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:14-01248 Revere Financial Corporation, a California corpora v. Roger, MD

#17.00 CONT Motion to Dismiss Adversary Proceeding Claims of Plaintiff, Jerry Wang, and to Strike and for a More Definite Statement as to Plaintiff, Revere Financial Corporation
(Holding date)

From: 11/5/14, 12/3/14, 12/15/14, 1/28/15, 4/15/15, 7/22/15, 9/23/15, 1/27/16
6/29/16, 9/28/16, 11/16/16, 2/1/17, 2/16/17, 5/3/17, 6/14/17

Also #18

EH__

Docket 10

Tentative Ruling:

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Douglas J Roger MD

Represented By
Summer M Shaw

Movant(s):

Douglas J Roger MD

Represented By
Summer M Shaw

Plaintiff(s):

A. Cisneros

Represented By
Chad V Haes
D Edward Hays

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Jerry Wang

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Represented By
Franklin R Fraley Jr
Anthony J Napolitano

Revere Financial Corporation, a

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:14-01248 Revere Financial Corporation, a California corpora v. Roger, MD

#18.00 CONT Status Conference RE: Complaint by Revere Financial Corporation, a California corporation, Jerry Wang against Douglas J Roger MD. false pretenses, false representation, actual fraud, 68 Dischargeability - 523(a)(6), willful and malicious injury, 67 Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 41 Objection / revocation of discharge - 727(c),(d),(e) **(Holding date)**

From: 11/26/14, 1/26/15, 1/28/15, 4/15/15, 7/22/15, 9/23/15, 1/27/16, 6/29/16, 9/28/16, 11/16/16, 2/1/17, 2/16/17, 5/3/17, 6/14/17

Also #17

EH__

Docket 1

Tentative Ruling:

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Douglas J Roger MD

Represented By
Summer M Shaw

Plaintiff(s):

A. Cisneros

Represented By
Chad V Haes
D Edward Hays

Jerry Wang

Represented By
Franklin R Fraley Jr

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Revere Financial Corporation, a

Anthony J Napolitano

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:16-19799 Jaison Vally Surace

Chapter 7

Adv#: 6:17-01006 Pringle v. Qadir et al

#19.00 CONT Status Conference RE: Complaint by John P. Pringle against Walie A. Qadir, Marym Qadir, Najlla Qadir. (Charge To Estate). (Attachments: # 1 Adversary Coversheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 3/8/17

EH__

Docket 1

*** VACATED *** REASON: CONTINUED TO 8/30/17 AT 2:00 P.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Defendant(s):

Najlla Qadir

Represented By
Batkhand Zoljargal

Marym Qadir

Represented By
Batkhand Zoljargal

Walie A. Qadir

Represented By
Batkhand Zoljargal

Plaintiff(s):

John P. Pringle

Represented By
Carmela Pagay
Todd A Frealy

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CONT... Jaison Vally Surace

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Trustee(s):

John P Pringle (TR)

Represented By
Todd A Frealy
Carmela Pagay

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6:13-27610 Baleine LP

Chapter 7

Adv#: 6:15-01314 Simons v. The Law Office of Don C. Burns et al

#20.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01314. Complaint by Larry D. Simons against The Law Office of Don C. Burns, Don C. Burns. (Charge To Estate \$350). (with Adversary Coversheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 2/10/16, 5/11/16, 6/8/16, 6/22/16, 10/19/16, 12/14/16, 2/15/17, 4/26/17

EH__

Docket 1

***** VACATED *** REASON: ORDER DISMISSING ADVERSARY
ENTERED 6/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Baleine LP

Represented By
Summer M Shaw

Defendant(s):

Don C. Burns

Pro Se

The Law Office of Don C. Burns

Pro Se

Plaintiff(s):

Larry D. Simons

Represented By
Carmela Pagay

Trustee(s):

Larry D Simons (TR)

Represented By

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Baleine LP

Carmela Pagay
Todd A Frealy

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6:16-14050 Ricardo Horacio Quintero

Chapter 7

Adv#: 6:17-01039 United States Trustee for the Central District of v. Quintero et al

#21.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01039. Complaint by United States Trustee for the Central District of California, Region 16 against Ricardo Horacio Quintero, Araceli Cantu. (Fee Not Required). with adversary cover sheet Nature of Suit: (41 - Objection / revocation of discharge - 727(c),(d), (e)

From: 4/26/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/23/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricardo Horacio Quintero	Pro Se
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Defendant(s):

Araceli Cantu	Pro Se
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Ricardo Horacio Quintero	Pro Se
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Joint Debtor(s):

Araceli Cantu	Pro Se
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Plaintiff(s):

United States Trustee for the Central	Represented By Everett L Green
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Trustee(s):

Howard B Grobstein (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, June 28, 2017

Hearing Room 303

2:00 PM

6:14-17350 Dean L. Springer, Sr.

Chapter 7

Adv#: 6:16-01143 Simons v. Caffery Financial, inc. et al

#22.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01143. Complaint by Larry D Simons against Caffery Financial, inc., Joe G. Caffery, Kim Caffery, Caffery Family Trust (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))
HOLDING DATE

From: 9/7/16, 12/7/16, 1/11/17, 2/15/17, 4/26/17, 6/7/17

EH __

Docket 1

***** VACATED *** REASON: ORDER DISMISSING ADVERSARY
ENTERED 6/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr.	Pro Se
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Defendant(s):

Kim Caffery	Pro Se
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Caffery Family Trust	Pro Se
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Caffery Financial, inc.	Pro Se
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Joe G. Caffery	Pro Se
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Joint Debtor(s):

Tami Jo Springer	Pro Se
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Plaintiff(s):

Larry D Simons	Represented By
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**United States Bankruptcy Court
Central District of California
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Wednesday, June 28, 2017

Hearing Room 303

2:00 PM

CONT... Dean L. Springer, Sr.

Chapter 7

Sarah Cate Hays
D Edward Hays

Trustee(s):

Larry D Simons (TR)

Represented By
Richard A Marshack
Sarah Cate Hays
D Edward Hays

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Wednesday, June 28, 2017

Hearing Room 303

2:00 PM

6:14-14377 Hilary D Hill

Chapter 7

Adv#: 6:15-01206 Speier v. Simmons et al

#23.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01206. Complaint by Steven M Speier against Angela Simmons, David Schanhals, Hilary D Hill

From: 9/23/15, 2/10/16, 5/25/16, 9/28/16, 11/16/16, 1/11/17, 3/29/17

EH__

Docket 1

*** VACATED *** REASON: CONTINUED TO 8/30/17 AT 2:00 P.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hilary D Hill

Represented By
Matthew D Resnik

Defendant(s):

Hilary D Hill

Pro Se

David Schanhals

Pro Se

Angela Simmons

Pro Se

Plaintiff(s):

Steven M Speier

Represented By
Robert P Goe

Trustee(s):

Steven M Speier (TR)

Represented By
Robert P Goe
Elizabeth A LaRocque

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Wednesday, June 28, 2017

Hearing Room 303

2:00 PM

6:16-17769 Efren Diaz Estrada

Chapter 7

#24.00 CONT Motion to Convert Case From Chapter 7 to 13

From: 4/5/17, 5/17/17, 5/31/17, 6/7/17

EH__

Docket 33

Tentative Ruling:

6/28/17

Discharge having been vacated June 13, 2017, parties to discuss conditions to be contained in conversion order.

APPEARANCES REQUIRED.

04/05/17

BACKGROUND

On August 30, 2016 ("Petition Date"), Efren Estrada ("Debtor"), filed his petition for chapter 7 relief. Charles Daff is the duly appointed chapter 7 trustee ("Trustee"). On December 12, 2016, the Debtor received a chapter 7 discharge.

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CONT... Efren Diaz Estrada

Chapter 7

On March 14, 2017 (or approximately 7 months after the Petition Date and post-discharge), the Debtors filed their motion for conversion of their case to a case under chapter 13 ("Motion"). On March 22, 2017, the Trustee filed opposition to the Debtors' Motion ("Opposition"). On March 29, 2017, the Debtors filed their reply ("Reply").

DISCUSSION

The Trustee argues that the Debtor's Motion should be denied because it has been filed in bad faith and because the Debtor's chapter 7 discharge precludes conversion pursuant to this Court's holding in *In re Santos*, 561 B.R. 825, 829 (C.D. Cal. 2017).

In response, the Debtor asserts that he will propose a chapter 13 plan that would pay the creditors whose debts have presumably already been discharged in this case. The only basis advanced by the Debtor to support his contention that a Debtor can propose to pay already discharged debts in a post-discharge converted chapter 13 case is that a different Judge in the Central District permitted such conversion in another case known to Counsel for the Debtor. The Debtor, however, has not indicated the legal basis for this other court's ruling and such ruling would not be binding on this Court. Separately, the Court notes that although not expressly discussed in the Memorandum Decision on *Santos*, the Debtors in that case had also proposed to pay creditors whose debts had already been discharged at 100% through a confirmed chapter 13 plan. However, the bare promise that such a plan will be proposed where the Debtor's chapter 7 debts have already been discharged has no binding effect.

Having failed to distinguish *Santos*, the Court declines to reach the issues raised by the Trustee regarding alleged bad faith of the Debtor in failing to properly identify the nature of his interest in the Property.

TENTATIVE RULING

Based on the foregoing, and following the *Santos* holding, the Court finds that "cause"

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CONT... Efren Diaz Estrada Chapter 7

exists to deny the Debtor's request for conversion because the Debtor has received the benefits of a chapter 7 discharge and now seeks to avoid the concomitant burden of allowing the Trustee to administer the Debtor's assets for the benefit of creditors.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Efren Diaz Estrada

Represented By
W. Derek May

Movant(s):

Efren Diaz Estrada

Represented By
W. Derek May
W. Derek May
W. Derek May

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Brianna L Frazier
Rika Kido
Ryan D ODea

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Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:12-37357 Jeffrey Fagin and Theresa Fagin

Chapter 13

#1.00 Application for Compensation

EH__

Docket 129

Tentative Ruling:

7/6/17

Dana Travis ("Applicant") substituted into the case at the time when Debtors were attempting to convert to Chapter 13 (on 1/31/17). The motion to convert was filed the same day, was opposed by the Chapter 7 trustee, and a hearing was set for March 1, 2017. The hearing was continued for Debtors to provide evidence of new employment that would enable a plan to be confirmed. Evidence was filed with the Court on March 7, 2017, and, after stipulation between Debtors and the Chapter 7 trustee, the case was converted to Chapter 13 on April 4, 2017.

On April 12, 2017, Debtors filed their Chapter 13 plan, and the plan was confirmed on May 22, 2017. On May 23, 2017, Applicant filed the instant fee application. On June 5, 2017, Trustee filed comments, taking no position on the application. On June 12, 2017, the Court set the matter for hearing.

11 U.S.C. § 330(a)(3) (2005) provides factors to be considered in determining the reasonableness of requested compensation.

First, the Court notes that Local Rule 3015-(1)(v)(5) and Local Rule 2016-(1) outline directions when filing a supplemental fee application. Here, Applicant has not filed an application that conforms with Local Rule 2016-(1), but has simply provided the Court with an itemized invoice and a cover sheet.

Second, the Court notes that adding up the itemized amounts (the final column) in the invoice produces a figure of \$6,970, yet Applicant has requested \$7,650. Therefore, the Court will reduce fees by \$680.

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CONT... **Jeffrey Fagin and Theresa Fagin**

Chapter 13

Finally, the Court has reviewed the fee application and finds the fees to be generally reasonable and necessary. Nevertheless, the Court makes the following reductions:

- 1) a reduction of \$500 for two entries that simply state "consultation clients" (dated 1/30 and 2/20). In the absence of further information, the Court finds the entries to be vague;
- 2) a reduction of \$200 related to preparation of the motion to convert (entry dated 1/30). The Court has reviewed the motion, which was relatively straightforward, and finds 1.5 hours to be excessive;
- 3) a reduction of \$180 corresponding to the time entries related to the continued hearing on the motion to convert (dated 4/5 and 4/6). At the time of these two time entries, the hearing had been vacated and, therefore, these entries are unreasonable and unclear.

Tentative:

The Court is inclined to APPROVE the application in the reduced amount of \$6,090.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jeffrey Fagin

Represented By
Dana Travis

Joint Debtor(s):

Theresa Fagin

Represented By
Dana Travis

Movant(s):

Theresa Fagin

Represented By
Dana Travis

Jeffrey Fagin

Represented By
Dana Travis

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CONT... Jeffrey Fagin and Theresa Fagin

Chapter 13

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

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Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:15-11540 Jesus Manuel Gomez and Maria Gomez

Chapter 13

#2.00 Application for Compensation with proof of service for Dana Travis, Debtor's Attorney, Period: to, Fee: \$1205.75, Expenses: \$.

EH__

Docket 64

Tentative Ruling:

7/6/17

11 U.S.C. § 330(a)(3) (2005) provides factors to be considered in determining the reasonableness of requested compensation.

Wells Fargo Bank filed a motion for relief from stay (real property), seeking relief under § 362(d)(1) because Debtors were six months behind on their post-confirmation payments. Debtors filed a standard opposition, stating that they would cure or enter into an adequate protection agreement. The hearing was continued twice, and then the parties entered into an adequate protection agreement.

Trustee's opposition is generic and does not identify any specific time entries which the Trustee believes are unreasonable or excessive. All of the entries are either for 0.1 or 0.2 hours, except for three entries regarding attendance at the two hearings and the filing of the opposition, all of which are either 0.3 or 0.35 hours. While there are a number of entries for 0.1 or 0.2 hours, the entries that relate to entering into an adequate protection payment appear reasonable.

There are also four entries, totaling 0.6 hours, which appear to reflect time Applicant spent helping the client make their monthly mortgage payments (on 4/11/17 and 5/15/17). The Court will reduce these entries by 0.3 hours, totaling \$118.50, because it is unclear why Applicant needed to consult with their client about the mortgage payments, and it seems unreasonable to bill the client \$39.50 for transmitting the monthly mortgage payment.

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CONT... Jesus Manuel Gomez and Maria Gomez

Chapter 13

Tentative:

The Court is inclined to APPROVE the application in a reduced amount of \$1,087.25.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jesus Manuel Gomez

Represented By
Dana Travis

Joint Debtor(s):

Maria Gomez

Represented By
Dana Travis

Movant(s):

Maria Gomez

Represented By
Dana Travis

Jesus Manuel Gomez

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:16-13637 Noel Mallari

Chapter 13

#3.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Also #4

EH__

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Noel Mallari

Represented By
David L Nelson

Movant(s):

Noel Mallari

Represented By
David L Nelson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:16-13637 Noel Mallari

Chapter 13

#4.00 CONT Trustee's Motion to Dismiss Case

From: 6/8/17

Also #3

EH__

Docket 24

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Noel Mallari

Represented By
David L Nelson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:16-16314 Anthony James Parker and Cynthia Parker

Chapter 13

#5.00 Motion to Disallow Claims Number 1 and Number 10

EH__

Docket 34

Tentative Ruling:

7/6/17

Background:

On July 15, 2016, Anthony & Cynthia Parker ("Debtors") filed a Chapter 13 voluntary petition. On July 18, 2016, Cavalry SPV II, LLC ("Creditor") filed proof of claim #1, an unsecured claim in the amount of \$1,209.03 ("Claim 1"). On September 1, 2016, Debtors' Chapter 13 plan was confirmed. On November 18, 2016, Creditor filed proof of claim #10, an unsecured claim in the amount of \$873.10 ("Claim 10").

On June 6, 2017, Debtors filed a claim objection to Claim 1 and Claim 10.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *See Lundell v. Anchor Constr. Specialists, Inc.*, 223

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CONT... **Anthony James Parker and Cynthia Parker**

Chapter 13

F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

11 U.S.C. § 502(b)(1) states:

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as

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CONT...

Anthony James Parker and Cynthia Parker

Chapter 13

of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that –

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable for a reason other than because such claim is contingent or unmatured.

Cal. Code Civ. P. § 337 provides a statute of limitations of four years for debts founded on written contracts, book accounts, accounts stated based upon account in writing, "balance of mutual, open and current account in writing," and rescission of written contract. Once the statute of limitations has passed, the claim is unenforceable.

Claim 1 and Claim 10 are both based on credit cards, and, therefore, fall within the scope of Cal Code Civ. P. § 337. The statement of account for Claim 1 states that the last payment was made on August 3, 2009, and that the account was charged off on March 12, 2010. The statement of account for Claim 10 states that the last payment was made on July 31, 2009, and that the account was charged off on March 3, 2010. No activity with regard to either claim occurred within the four years prior the filing of the bankruptcy petition, and, therefore, the statute of limitations has expired.

Furthermore, the Court deems failure to oppose to be consent to the relief requested pursuant to Local Rule 9013-(1)(h).

Tentative Ruling

The Court is inclined to SUSTAIN the objection.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

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CONT... Anthony James Parker and Cynthia Parker

Chapter 13

Party Information

Debtor(s):

Anthony James Parker

Represented By
Michael E Clark
Barry E Borowitz

Joint Debtor(s):

Cynthia Parker

Represented By
Michael E Clark
Barry E Borowitz

Movant(s):

Cynthia Parker

Represented By
Michael E Clark
Barry E Borowitz

Anthony James Parker

Represented By
Michael E Clark
Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-19429 Patricia Morales

Chapter 13

#6.00 CONT Motion to vacate Dismissal Pursuant to F.R.B.P sect 60(b)

From: 5/18/17

Also #7

EH__

Docket 57

Tentative Ruling:

5/18/17

BACKGROUND

On October 24, 2016, Patricia Morales ("Debtor") filed a Chapter 13 voluntary petition. On January 24, 2017, Debtor's Chapter 13 plan was confirmed.

On April 3, 2017, Trustee's motion to dismiss was granted after no opposition was properly filed. On April 6, 2017, Debtor filed a motion to vacate dismissal (the "First Motion"). Trustee filed his disapproval on April 10, 2017. On April 21, 2017, Debtor filed a late reply that was not served

The Court posted a tentative prior to the hearing on April 27, 2017, that outlined a variety of technical and substantive deficiencies, both legal and factual. At the hearing, Debtor's counsel withdrew the motion. On May 5, 2017, Debtor filed a new motion to vacate dismissal (the "Second Motion").

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CONT... Patricia Morales

Chapter 13

DISCUSSION

While the Court notes that Debtor appears to have made some attempt to remedy the deficiencies noted in the Court's previous tentative ruling, the Second Motion still contains significant technical and substantive deficiencies, both legal and factual.

First of all, service of the Second Motion is improper. Debtor's service list abruptly cuts off at the letter "L" (creditors listed in alphabetical order).

Second of all, the Second Motion was not calendared and noticed correctly. The motion was set on "regular notice" but Debtor only provided thirteen days notice of the hearing. This is especially concerning because the reason the case was dismissed was because Debtor's opposition to the motion to dismiss was calendared incorrectly.

Third, the Second Motion contains the same general factual deficiencies as the First Motion. Once again, Debtor identifies her failure to file a responsive pleading to Trustee's motion for dismissal as the act to which a 60(b) analysis applies. As the Court noted in its previous tentative, however, Debtor did file an opposition to that motion, but a hearing was not set because Debtor selected incorrect hearing information. Yet, Debtor has opted to include the same assertions in the Second Motion.

Fourth, the majority of Debtor's motion discusses the payment history of Debtor, Debtor's account of which was disputed by Trustee in his opposition to the First Motion. Once again, the exhibits included are not authenticated. Additionally, the Second Motion removes the declaration of Debtor. Instead, in its place, is a declaration of Debtor's counsel, which is simply a verbatim copy of the motion, and otherwise lacks foundation and personal knowledge.

Fifth, while the Second Motion appears to make an attempt to remedy the legal

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CONT... Patricia Morales

Chapter 13

deficiencies of the First Motion, that attempt is inadequate. While the Second Motion, unlike the First Motion, does identify the appropriate legal standard, it is still far from adequate. The motion appears to include two statements that could be characterized as legal, and that are relevant in this matter. The first sentence states: "[T]he court has the authority to grant the relief sought herein pursuant F.R.C.P. 60(b) States: (1) Mistake, inadvertence, surprise, or excusable neglect." The second statement, which occurs before the first, states: "Debtor respectfully requests the court to vacate dismissal and reinstate the bankruptcy case on the following grounds that the reason for her failure to file a responsive opposition to the motion to dismiss was excusable."

Regarding the first sentence, apart from the fact that it is clearly not a sentence, the motion contains no further discussion of the legal standard or how to apply 60(b) to the facts of this case. Regarding the second sentence, apart from the fact that it is grammatically defective, the Court notes, once again, that Debtor did file an opposition to Trustee's motion to dismiss. The second sentence simply misrepresents the record and lacks credibility.

Debtor's previous four filings in this case (the Second Motion, the First Motion and Debtor's reply, and the opposition to Trustee's motion to dismiss) contain numerous technical and substantive deficiencies, are far from legally adequate, and are factually inaccurate. Multiple filings were noticed incorrectly and multiple filings were served incorrectly. More importantly, despite the fact the Court posted a tentative that informed Debtor why the First Motion was inadequate, Debtor has, for the most part, repeated the deficiencies in the Second Motion. The two sentences outlined above appear to constitute the steps taken to respond to the Court's tentative, and those two sentences are simply inadequate.

Tentative Ruling:

For the foregoing reasons, the Court is inclined to CONTINUE the hearing for movant to file/serve amended pleadings and to coincide with a hearing on an order to show cause why Movant's counsel should not be sanctioned.

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CONT... Patricia Morales

Chapter 13

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Patricia Morales

Represented By
Michael C Maddux

Movant(s):

Patricia Morales

Represented By
Michael C Maddux

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-19429 Patricia Morales

Chapter 13

#7.00 OSC why Michael Maddux should not be: (1) Required to Disgorge \$4000 compensation; and (2) Reported to the State Bar Disciplinary Committee for Failure to Conform to Professional Rules of Conduct

Also #6

EH__

Docket 0

*** VACATED *** REASON: ORDER ENTERED ON 6/26/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Morales

Represented By
Michael C Maddux

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Hearing Room 303

12:30 PM

6:16-20003 Pamula Raye St Dennis

Chapter 13

#8.00 CONT Confirmation of Chapter 13 Plan

From: 6/8/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pamula Raye St Dennis

Represented By
Cynthia A Dunning

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-11182 Renard Louis Hamilton and Regina Elizabeth Hamilton

Chapter 13

#9.00 CONT Confirmation of Chapter 13 Plan

From: 3/30/17, 4/6/17, 5/4/17, 5/18/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Renard Louis Hamilton

Represented By
D Justin Harelik

Joint Debtor(s):

Regina Elizabeth Hamilton

Represented By
D Justin Harelik

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-13107 Angel Benavidez

Chapter 13

#10.00 CONT Confirmation of Chapter 13 Plan

From: 6/1/17

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angel Benavidez

Represented By
William P Mullins

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Hearing Room 303

12:30 PM

6:17-13232 David B. Hertsgaard

Chapter 7

#11.00 CONT Confirmation of Chapter 13 Plan

From: 6/1/17

EH __

Docket 0

***** VACATED *** REASON: CASE CONVERTED TO CHAPTER 7 ON
6/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David B. Hertsgaard

Represented By
Timothy S Huyck

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-13433 Christina Hill

Chapter 13

#12.00 CONT Confirmation of Chapter 13 Plan

From: 6/1/17

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christina Hill

Represented By
Edward T Weber

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-13529 Mark R. Smith

Chapter 13

#13.00 CONT Confirmation of Chapter 13 Plan

From: 6/1/17

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark R. Smith

Represented By
Patricia M Ashcraft

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-13851 Richard J Sarenana, Jr and Maria Sarenana

Chapter 13

#14.00 CONT Confirmation of Chapter 13 Plan

From: 6/22/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard J Sarenana Jr

Represented By
Cynthia A Dunning

Joint Debtor(s):

Maria Sarenana

Represented By
Cynthia A Dunning

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14288 Constantino Orea

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 6/9/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Constantino Orea

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14289 Michael Robert Tucker

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Robert Tucker Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14292 Lubna Shiraz Ahmed

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CONTINUED TO 8/3/17 AT 12:30 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lubna Shiraz Ahmed

Represented By
Joshua L Sternberg

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14303 Benjamin John Ramos

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Benjamin John Ramos

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14306 Jane R Mary Engel

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 5/26/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jane R Mary Engel

Represented By
Peter L Nisson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14307 Elmer Arnold Tompkins

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elmer Arnold Tompkins

Represented By
Scott Kosner

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14325 Christopher Ramirez

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 6/12/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Ramirez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14330 Douglas M Horbelt and Elizabeth R Horbelt

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas M Horbelt

Represented By
Gary J Holt

Joint Debtor(s):

Elizabeth R Horbelt

Represented By
Gary J Holt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14359 Lashanda Moniek Shelton

Chapter 13

#23.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lashanda Moniek Shelton

Represented By
Lionel E Giron

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14375 Willa Henderson Childress

Chapter 13

#24.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 6/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Willa Henderson Childress

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14376 David Loronzo Cheshier

Chapter 13

#25.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 6/12/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Loronzo Cheshier

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14388 Enza Daniela Puma

Chapter 13

#26.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Enza Daniela Puma

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14401 Tracy R. Franco

Chapter 13

#27.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tracy R. Franco

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14501 Julie Lynn Salazar

Chapter 13

#28.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julie Lynn Salazar

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14511 Reginald McClure

Chapter 13

#29.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 6/19/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Reginald McClure

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14561 Joseph Wesley Gordon, Jr

Chapter 13

#30.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 6/19/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Wesley Gordon Jr

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14588 Chadwick Otieno Ochieng

Chapter 13

#31.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chadwick Otieno Ochieng

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14619 Candice Maria Borrego

Chapter 13

#32.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Candice Maria Borrego

Represented By
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14623 William Thomas Winn

Chapter 13

#33.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 6/19/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Thomas Winn

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14624 Librada Salazar

Chapter 13

#34.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Librada Salazar

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14656 Kimberly A. Miller

Chapter 13

#35.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kimberly A. Miller

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:30 PM

6:17-14658 Esther Martinez

Chapter 13

#36.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 6/20/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Esther Martinez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:31 PM

6:13-25621 Gildardo R Herrera and Stephanie D Herrera

Chapter 13

#37.00 Trustee's Motion to Dismiss Case

EH__

Docket 75

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gildardo R Herrera

Represented By
Lisa H Robinson
John F Brady

Joint Debtor(s):

Stephanie D Herrera

Represented By
Lisa H Robinson
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, July 06, 2017

Hearing Room 303

12:31 PM

6:14-10795 Agnes Smith

Chapter 13

#38.00 Trustee's Motion to Dismiss Case

EH__

Docket 57

*** VACATED *** REASON: WITHDRAWAL OF MOTION FLD
6/28/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Agnes Smith

Represented By
James T Lillard

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:31 PM

6:14-25360 William Meineke and Kathie Meineke

Chapter 13

#39.00 CONT Trustee's Motion to Dismiss Case

From: 6/8/17

EH__

Docket 53

*** VACATED *** REASON: WITHDRAWAL OF MOTION FLD
6/28/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Meineke

Represented By
Todd B Becker

Joint Debtor(s):

Kathie Meineke

Represented By
Todd B Becker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:31 PM

6:16-13388 James Leonard Blow, Jr. and Amanda Joyce Atkinson-Blow Chapter 13

#40.00 CONT Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

From: 6/1/17, 6/8/17

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Leonard Blow Jr.

Represented By
Jonathan D Doan

Joint Debtor(s):

Amanda Joyce Atkinson-Blow

Represented By
Jonathan D Doan

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:31 PM

6:16-18526 Ana M. Oliver

Chapter 13

#41.00 CONT Trustee's Motion to Dismiss Case

From: 6/22/17

EH__

Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ana M. Oliver

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:31 PM

6:16-21232 Alejandro Salinas, Jr.

Chapter 13

#42.00 CONT Trustee's Motion to Dismiss Case

From: 6/22/17

EH__

Docket 33

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alejandro Salinas Jr.

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:31 PM

6:17-10702 Miriam Louise Preisendanz

Chapter 13

#43.00 Trustee's Motion to Dismiss Case

EH__

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miriam Louise Preisendanz

Represented By
Danny K Agai

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 06, 2017

Hearing Room 303

12:31 PM

6:17-10830 Juana Santiago

Chapter 13

#44.00 CONT Trustee's Motion to Dismiss Case

From: 6/22/17

EH__

Docket 31

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juana Santiago

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:11-45244 Scott Ray Pena and Adriana Pena

Chapter 13

#1.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 28316 Evening Star Dr, Sun City, CA 92585

MOVANT: WELLS FARGO BANK N.A.

EH__

Docket 87

Tentative Ruling:

July 11, 2017

Service: Proper

Opposition: None

GRANT relief from the stay under §§ 362(d)(1) based on post-petition failure to make payments. GRANT waiver of 4001(a)(3) stay and requests under ¶¶ 3 and 12.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Scott Ray Pena

Represented By
Chris A Mullen

Joint Debtor(s):

Adriana Pena

Represented By
Chris A Mullen

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Kristin A Zilberstein

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

CONT... Scott Ray Pena and Adriana Pena

Chapter 13

Kelly M Raftery

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By

Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:12-21612 Amir El-Jamil McNeely and Veronica Guadalupe McNeely Chapter 13

#2.00 CONT Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2009 Nissan Altima 2.5 Sedan 4D

MOVANT: WESTLAKE FINANCIAL SERVICES

From: 6/27/17

EH__

Docket 113

Tentative Ruling:

7/11/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Amir El-Jamil McNeely

Represented By
Steven A Alpert

Joint Debtor(s):

Veronica Guadalupe McNeely

Represented By
Steven A Alpert

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

CONT... Amir El-Jamil McNeely and Veronica Guadalupe McNeely

Chapter 13

Movant(s):

Westlake Financial Services

Represented By
Robert P Zahradka

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:12-37351 Blanca Estela Flores

Chapter 13

#3.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2767 Moose Creek Lane, Ontario, CA 91761

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 112

Tentative Ruling:

07/11/2017

Service: Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1) based on Debtor's failure to make required postpetition payments. GRANT waiver of 4001(a)(3) stay. GRANT relief under ¶2 and ¶3. DENY relief under ¶13 as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Blanca Estela Flores

Represented By
John F Brady
Lisa H Robinson

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Alexander K Lee

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

CONT... Blanca Estela Flores

Amrane (RS) Cohen (TR)

Chapter 13

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:13-26277 Charles Frederick Biehl

Chapter 7

#4.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 3338 Tempe Dr Huntington Beach, CA 92649

MOVANT: BAYVIEW LOAN SERVICING LLC AS SERVICING AGENT FOR
M&T BANK

From: 1/24/17, 4/11/17, 4/25/17, 6/27/17

EH__

Docket 162

***** VACATED *** REASON: WITHDRAWAL FILED 7/7/17**

Tentative Ruling:

Tentative Ruling:

Service is Proper
Opposition: Yes

Given the amount of equity as well as the Trustee's pending adversary related to the property, the Court is inclined to CONTINUE the hearing on the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Charles Frederick Biehl

Represented By

Daryl L Binkley - DISBARRED -
Steven L Bryson

Movant(s):

Bayview Loan Servicing, LLC as

Represented By

Kristin A Zilberstein

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

CONT... Charles Frederick Biehl

Chapter 7

Trustee(s):

John P Pringle (TR)

Represented By
James C Bastian Jr
Elyza P Eshaghi
Brandon J Iskander

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:16-11745 Alfredo Manzo Arrieta and Mayte Hernandez- Arrieta

Chapter 13

#5.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 4057 East Hamilton Paseo, Ontario, CA 91761

MOVANT: WELLS FARGO BANK, N.A.

From: 5/30/17, 6/11/17

EH__

Docket 98

***** VACATED *** REASON: CASE DISMISSED 6/8/17**

Tentative Ruling:

5/30/2017

Service is Proper
Opposition: Yes

Parties to advise Court regarding adequate protection discussions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Alfredo Manzo Arrieta

Represented By
Andy C Warshaw

Joint Debtor(s):

Mayte Hernandez- Arrieta

Represented By
Andy C Warshaw

Movant(s):

Wells Fargo Bank, N.A.

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

**CONT... Alfredo Manzo Arrieta and Mayte Hernandez- Arrieta
Darlene C Vigil**

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:16-15581 Dexter Humphrey

Chapter 13

#6.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1990 Scenic Ridge Rd. Chino Hills CA

MOVANT: WILMINGTON SAVINGS FUND SOCIETY

From: 5/16/17, 6/27/17

EH__

Docket 39

***** VACATED *** REASON: ORDER ENTERED 7/10/17**

Tentative Ruling:

05/16/2017
Service: Proper
Opposition: Yes

The Debtor acknowledges the missed payments and asserts that he intends to take money from his 401k to bring the arrears current. The Debtor indicates he has \$10,000 to pay towards the arrears now and is requesting an additional 45 days for cure the remainder.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Dexter Humphrey

Represented By
Michael J Hemming

Movant(s):

Wilmington Savings Fund Society,

Represented By
Bonni S Mantovani
Diana Torres-Brito
Cassandra J Richey

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

CONT... Dexter Humphrey

Asya Landa

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:16-17536 Gracey Hunter

Chapter 13

#7.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 26121 Casa Encantador Road, Moreno Valley, California 92555

MOVANT: NATIONSTAR MORTGAGE LLC

EH__

Docket 64

Tentative Ruling:

07/11/2017

Service: Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1) based on Debtor's failure to make required postpetition payments. GRANT relief pursuant to ¶2, ¶3, ¶6 and ¶12. GRANT waiver of 4001(a)(3) stay. DENY Relief under ¶13 as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Gracey Hunter

Represented By
Todd L Turoci

Movant(s):

NATIONSTAR MORTGAGE LLC

Represented By
Erica T Loftis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:16-17724 Carlos Gutierrez and Josefina Gutierrez

Chapter 13

#8.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1553 N Granite Ave

MOVANT: WELLS FARGO BANK N.A.

From: 6/27/17

EH__

Docket 34

Tentative Ruling:

7/11/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT relief from the § 1301(a) stay. GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3 and 12.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Carlos Gutierrez

Represented By
Patricia A Mireles

Joint Debtor(s):

Josefina Gutierrez

Represented By
Patricia A Mireles

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

CONT... Carlos Gutierrez and Josefina Gutierrez

Chapter 13

Movant(s):

Wells Fargo Bank, N.A.

Represented By

Kristin A Zilberstein

Kelly M Raftery

Oneika White-Dovlo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:16-19967 Jeremy Joseph Salas and Ronda-Sue Alice Marie Salas

Chapter 13

#9.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2011 Honda Pilot-V6 Utility 4D LX 4WD

MOVANT: CAPITAL ONE AUTO FINANCE, A DIVISION OF CAPITAL ONE N.A.

EH__

Docket 31

Tentative Ruling:

July 11, 2017
Service is Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). DENY request for relief from the stay under § 362(d)(2) based on a lack of cause shown. GRANT waiver of 4001(a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Jeremy Joseph Salas

Represented By
Robert W Ripley

Joint Debtor(s):

Ronda-Sue Alice Marie Salas

Represented By
Robert W Ripley

Movant(s):

Capital One Auto Finance

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

**CONT... Jeremy Joseph Salas and Ronda-Sue Alice Marie Salas
Marian Garza
Bret D. Allen**

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:16-20813 Thong Huu Nguyen

Chapter 13

#10.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 HONDA ACCORD, VIN: 1HGC R2F5 9EA0 37214

MOVANT: AMERICAN HONDA FINANCE CORPORATION

From: 6/27/17

EH__

Docket 26

Tentative Ruling:

7/11/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Thong Huu Nguyen

Represented By
Yoon O Ham

Movant(s):

AMERICAN HONDA FINANCE

Represented By
Vincent V Frounjian

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

CONT... Thong Huu Nguyen

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:16-20967 Ricky Antonio Scott and Shemida Shiloni Scott

Chapter 13

#11.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2006 Mercedes Benz S Class

MOVANT: QUALITY ACCEPTANCE, LLC

EH__

Docket 41

***** VACATED *** REASON: PER ORDER ENTERED 7/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricky Antonio Scott

Represented By
Marc E Grossman

Joint Debtor(s):

Shemida Shiloni Scott

Represented By
Marc E Grossman

Movant(s):

Quality Acceptance, LLC

Represented By
Robert S Lampl

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:17-10688 John W Wells

Chapter 7

#12.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 34233 Larksborg Ct Lake Elsinore, CA 92532

MOVANT: U.S. BANK NATIONAL ASSOCIATION

From: 6/27/17

EH__

Docket 27

Tentative Ruling:

07/11/2017
Service: Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

John W Wells

Represented By
Daniel King

Movant(s):

U.S. BANK NATIONAL

Represented By
April Harriott
Sean C Ferry

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

CONT... John W Wells

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:17-11095 Kayla Marie Rojas

Chapter 7

#13.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 135 Waterview St Playa Del Rey, CA 90293

MOVANT: DEUTSCHE BANK NATIONAL TRUST COMPANY

From: 6/27/17

EH__

Docket 19

Tentative Ruling:

7/11/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(4). Court finds that bankruptcy case was part of a scheme to hinder, delay and defraud creditors based on multiple bankruptcy filings and unauthorized transfers affecting this property. The Court makes no finding of specific bad faith as to the Debtor. GRANT waiver of 4001(a)(3) stay. GRANT pursuant to ¶ 3. DENIED as to § 362(d)(2) and ¶11(b) for lack of cause shown.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Kayla Marie Rojas

Represented By
Kris Crawford

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

CONT... Kayla Marie Rojas

Chapter 7

Movant(s):

DEUTSCHE BANK NATIONAL

Represented By
Angie M Marth

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:17-11670 AMANDO MORALES and ALICIA MALDONADO

Chapter 7

#14.00 CONT Motion for relief from automatic stay with supporting declarations
ACTION IN NON-BANKRUPTCY FORUM RE: Real Property

MOVANT: MARTHA E GUERRERO AND EDUARDO E GUERRERO

FROM: 4/25/17, 5/30/17

EH__

Docket 11

***** VACATED *** REASON: CONTINUED TO 7/25/17 AT 10:00 A.M.**

Tentative Ruling:

5/30/17

Debtor's opposition argues that the real estate contract is an executory contract that can be rejected in bankruptcy. While providing an applicable citation for that assertion, Debtor does not apply the legal standard to the facts of this case.

Nevertheless, it appears that Debtor's characterization of the contract as "executory" may have merit. While Movant, in the motion, states that "all contingencies had been removed," and, in the reply, states that they "dutifully removed all their contractual contingencies," the state court complaint submitted to support their motion states, in paragraph 23: "Plaintiffs have fully performed all conditions, covenants, and promises required by them on their part to be performed in accordance with the terms and conditions of the contract, *except* the final payment for the purchase of the Property." (emphasis added). While Movants appear to have made the initial deposit into escrow, it does not appear that the final purchase price was tendered.

"[A]n 'executory contract' that can be rejected in bankruptcy is a contract on which performance remains due on both sides at the time of the bankruptcy petition." *Matter of Newcomb*, 744 F.2d 621, 624 (8th Cir. 1984); *see also In re Texscan Corp.*, 976 F.2d 1269-1271-72 (9th Cir. 1992). In *Newcomb*, the Court held that when the funds had already been transferred into escrow, there was no executory contract – no material obligations remained on the part of the grantor. *See id.*

**United States Bankruptcy Court
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Judge Mark Houle, Presiding
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Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

CONT... AMANDO MORALES and ALICIA MALDONADO

Chapter 7

In the Ninth Circuit, a real estate sales contract remains executory until the full purchase price is deposited into escrow by the purchaser. *See In re Hertz*, 536 B.R. 434, 439-41 (Bankr. C.D. Cal. 2015) (an extended discussion on when a purchase contract loses its executory nature).

Given that the real estate purchase contract may be an executory contract that shortly will be rejected by operation of law under 11 U.S.C. § 365(d)(1), and that Movants are seeking a state court order for specific performance under the contract, granting relief from stay would be improper because the state court proceedings would interfere with the bankruptcy court proceedings. Interference with the administration of the estate is the most important consideration when considering a motion for relief from stay to proceed with state court litigation. *See In re Roger*, 539 B.R. 837, 845 C.D. Cal. 2015) ("According to the court in *Curtis*, the most importance factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate. Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit."). Here, there is a possibility of significant interference with the bankruptcy estate.

Tentative Ruling:

For the foregoing reasons, the Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

AMANDO MORALES

Represented By
William D Gurney

Joint Debtor(s):

ALICIA MALDONADO JIMENEZ

Represented By
William D Gurney

Movant(s):

Eduardo E. Guerrero

Represented By

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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10:00 AM

CONT... AMANDO MORALES and ALICIA MALDONADO

Chapter 7

Christopher J Langley

Trustee(s):

Charles W Daff (TR)

Represented By
Brandon J Iskander
Lynda T Bui

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:17-11945 Leticia Olivares

Chapter 7

#15.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Kia Optima

MOVANT: WESCOM CREDIT UNION

From: 6/27/17

EH__

Docket 12

Tentative Ruling:

7/11/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Leticia Olivares

Represented By
Paul Y Lee

Movant(s):

Wescom Credit Union

Represented By
Karel G Rocha

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:17-12212 Cristian E Vargas

Chapter 7

#16.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 TOYOTA COROLLA, Vin: 5YFBURHE0GP388588

MOVANT: TOYOTA MOTOR CREDIT CORPORATION

From: 6/27/17

EH__

Docket 13

Tentative Ruling:

7/11/2017
Service is Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Cristian E Vargas Pro Se

Movant(s):

Toyota Motor Credit Corporation Represented By
Tyneia Merritt

Trustee(s):

Robert Whitmore (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:17-12288 William Thomas Oglesby

Chapter 7

#17.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2693 North Via Miralest, Palm Springs, CA 92262

MOVANT: DEUTSCHE BANK NATIONAL TRUST COMPANY

EH__

Docket 10

Tentative Ruling:

07/11/2017

Service: Proper

Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2) based on inadequate equity cushion of (-40.57%) and Debtor's negative equity of (-\$171,669.74). GRANT relief under ¶2. GRANT waiver of 4001(a)(3) stay. DENY relief under ¶13 as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

William Thomas Oglesby

Represented By

H. Christopher Heritage

Movant(s):

DEUTSCHE BANK NATIONAL

Represented By

Sean C Ferry

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:17-12568 Billy Joe Woodson and Kimra Lyn Woodson

Chapter 7

#18.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 FORD C-MAX

MOVANT: FORD MOTOR CREDIT COMPANY LLC

From: 6/27/17

EH__

Docket 12

Tentative Ruling:

7/11/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Billy Joe Woodson

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Kimra Lyn Woodson

Represented By
Patricia M Ashcraft

Movant(s):

Ford Motor Credit Company LLC

Represented By
Sheryl K Ith

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

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10:00 AM

CONT... Billy Joe Woodson and Kimra Lyn Woodson

Chapter 7

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:17-12886 Ryan Keith Richardson and Joyce Nanette Richardson

Chapter 7

#19.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11666 Oak Knoll Court, Fontana, CA

MOVANT: U.S. BANK, NA AS LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST

From: 6/20/17

EH__

Docket 23

Tentative Ruling:

June 20, 2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Ryan Keith Richardson

Represented By
Ronald B Talkov

Joint Debtor(s):

Joyce Nanette Richardson

Represented By
Ronald B Talkov

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

CONT... Ryan Keith Richardson and Joyce Nanette Richardson

Chapter 7

Movant(s):

U.S. BANK, NA AS LEGAL TITLE

Represented By
Diane Weifenbach

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:17-12925 Octavio N Harguindeguy

Chapter 7

#20.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 FORD MUSTANG, VIN 1FA6P8THXG5299201

MOVANT: FORD MOTOR CREDIT COMPANY LLC

EH__

Docket 8

Tentative Ruling:

July 11, 2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Octavio N Harguindeguy

Represented By
Neil R Hedtke

Movant(s):

Ford Motor Credit Company LLC

Represented By
Sheryl K Ith

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:17-12943 Stephen Paul Gibson

Chapter 7

#21.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1787 North Wilson Avenue, Upland, CA 91784 . filed by Creditor Wilmington Trust, National Association, Not in its Individual Capacity but as Trustee of ARLP Securitization Trust, Series 2014-1, its successors and/or assigns)

MOVANT: WILMINGTON TRUST, NATIONAL ASSOCIATION

CASE DISMISSED 6/8/17

EH__

Docket 15

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stephen Paul Gibson

Pro Se

Movant(s):

Wilmington Trust, National

Represented By
Nichole Glowin

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:17-13072 Ricardo Menendez

Chapter 13

#22.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 245 S Iris St., San Bernardino California 92410-2270

MOVANT: WELLS FARGO BANK

From: 5/30/17, 6/20/17

EH__

Docket 18

***** VACATED *** REASON: ORDER ENTERED 7/10/17**

Tentative Ruling:

5/30/2017

Service is Proper
Opposition: None

While cause arguably exists to lift the stay, Movant to discuss the status of this motion given that Movant withdrew its bad faith objection to confirmation at Debtor's confirmation hearing on May 18, 2017.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ricardo Menendez

Represented By
Sunita N Sood

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Dane W Exnowski

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

CONT... Ricardo Menendez

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:17-13099 Lucerito M Peralta

Chapter 7

#23.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HONDA ACCORD, VIN: 1HGC R2F3 4GA0 39616

MOVANT: AMERICAN HONDA FINANCE CORPORATION

EH__

Docket 9

Tentative Ruling:

July 11, 2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Lucerito M Peralta

Represented By
Paul Y Lee

Movant(s):

AMERICAN HONDA FINANCE

Represented By
Vincent V Frounjian

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:17-13409 Jose Hernandez, Jr.

Chapter 7

#24.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 DODGE RAM, VIN 3C6JR6ATXEG117004

MOVANT: TD AUTO FINANCE LLC

EH__

Docket 12

Tentative Ruling:

July 11, 2017
Service is Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1) based on a lack of adequate protection. Equity cushion is below 20%. DENY request under §362(d)(2) based on lack of cause shown. There is equity in the Property. GRANT waiver of 4001(a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Jose Hernandez Jr.

Represented By
Christopher Hewitt

Movant(s):

TD Auto Finance LLC

Represented By
Sheryl K Ith

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 11, 2017

Hearing Room 303

10:00 AM

6:17-13836 Hermelinda Diaz

Chapter 13

#25.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Re: 3865 VERMONT ST, SAN BERNARDINO, CA 92407

MOVANT: WELLS FARGO BANK, N.A.

CASE DISMISSED 5/26/17

From: 6/27/17

EH__

Docket 12

Tentative Ruling:

07/11/2017

Service: Improper

Opposition: None

Once improper service is remedied, the tentative ruling is to GRANT relief from the stay under §§ 362(d)(1) and 362(d)(4) based on the following: Debtor has not paid mortgage for over two years, Movant is one of two creditors listed in case commencement documents, Debtor filed only a few case commencement documents and schedules, and the statement of financial affairs have not been filed. Additionally, the Debtor's failure to file required documents resulted in dismissal of the case on May 26, 2017. Debtor has also filed two previous bankruptcies with respect to the property in 2016 which were dismissed. Based on the foregoing, the Court is inclined to GRANT relief pursuant to ¶2, ¶5, ¶7b, and ¶9b. Court is also inclined to GRANT relief that Movant may provide and enter into potential forbearance agreement; confirming that no stay is in effect pursuant to § 362(c)(4). GRANT waiver of 4001(a) (3) stay.

As reflected above, while the court is inclined to grant relief from stay, service was improper due to Movant's failure to serve Debtor. Specifically, the Debtor's address

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CONT... Hermelinda Diaz Chapter 13

of record is 3865 Vermont St., San Bernardino, CA 92407, however, Movant served the Debtor at 865 Vermont St., San Bernardino, CA 92407. Based on the foregoing, the hearing will be continued to August 1, 2017, at 10:00 a.m.

APPEARANCES WAIVED. Movant to file and serve an amended Notice of Motion and Motion on the Debtor at the correct address no later than July 12, 2017.

Party Information

Debtor(s):

Hermelinda Diaz Pro Se

Movant(s):

WELLS FARGO BANK, N.A. Represented By
Jason C Kolbe

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

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10:00 AM

6:17-14228 Michelle Meredith

Chapter 7

#27.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 BMW 528i, VIN WBAXG5C51DD235064

MOVANT: BMW BANK OF NORTH AMERICA

EH__

Docket 21

Tentative Ruling:

07/11/2017

Service is Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1) based on an insufficient equity cushion. GRANT waiver of 4001(a)(3) stay. GRANT relief under ¶2.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Michelle Meredith

Represented By
Patricia M Ashcraft

Movant(s):

BMW Bank of North America

Represented By
Timothy J Silverman

Trustee(s):

Howard B Grobstein (TR)

Pro Se

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10:00 AM

6:17-14306 Jane R Mary Engel

Chapter 13

#28.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 42305 North Shore Drive, Fawnskin, CA 92333

MOVANT: ANDREW FONTI AND JANET R. FONTI

CASE DISMISSED 5/26/17

From: 6/27/17

EH__

Docket 16

Tentative Ruling:

07/11/2017
Service: Proper
Opposition: None

GRANT relief from the stay under §362(d)(1) based on (1) a lack of fire insurance required by contract and (2) unauthorized transfer to Debtor two days after filing for bankruptcy. GRANT relief from stay under 362(d)(4) based on multiple bankruptcies filed in order to avoid foreclosure and unauthorized transfer of an interest in the Property to Debtor without the consent of Movant. GRANT relief under ¶2, ¶8b, ¶9, and ¶10b. Relief DENIED under ¶11b for lack of cause shown. Relief under ¶13 is DENIED as moot. GRANT waiver of 4001(a)(3) stay.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jane R Mary Engel

Represented By
Peter L Nisson

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CONT... Jane R Mary Engel

Chapter 13

Movant(s):

Andrew Fonti, An Unmarried Man,

Represented By
Andrew J Miller

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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10:00 AM

6:17-14738 Efren Gutierrez

Chapter 7

#29.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 2800 EAST RIVERSIDE DRIVE # 100, ONTARIO, CA 91761

MOVANT: ROC III CA TERRACINA, LLC, MCDONNELL TERRACINA, LLC, KAPPE TERRACINA, LLC

EH__

Docket 9

***** VACATED *** REASON: CASE DISMISSED 6/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Efren Gutierrez

Pro Se

Movant(s):

ROC III CA Terracina, LLC,

Represented By
Joseph Cruz

Trustee(s):

Charles W Daff (TR)

Pro Se

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10:00 AM

6:17-14902 Jeanne Southerland and Royal Palms Apartments

Chapter 7

#30.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 2568 E. Baseline Street, Unit 109, Highland, CA 92346

MOVANT: ROYAL PALMS APARTMENTS

EH__

Docket 13

Tentative Ruling:

July 11, 2017

Service: Ok

Opposition: Yes

The Debtor does not controvert the bases for relief from stay. She only requests that there be no lock out prior to September 1, 2017. Debtor further asserts that there was insufficient notice to her and that the Movant did not provide proof of service on the Debtor or Trustee. However, the Trustee receives notice via NEF which is noted on the Motion's proof of service. Additionally, the Motion indicates that Debtor was served at 2568 Baseline St, Apt 109 in Highland, CA (the same address indicated by the Debtor on her petition). In fact, Movant served Debtor on June 20 (although the Motion was not filed until June 23) and thus provided nearly three weeks notice of the hearing, and the Court's procedures permit an unlawful detainer relief from stay motion to be filed with only 5 days notice. As such, notice was sufficient.

Absent further evidence, the Court is inclined to GRANT the Motion in its entirety.

APPEARANCES REQUIRED.

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CONT... Jeanne Southerland and Royal Palms Apartments

Chapter 7

Party Information

Debtor(s):

Jeanne Southerland

Pro Se

Movant(s):

Royal Palms Apartments

Represented By
Kevin H Mello

Trustee(s):

Steven M Speier (TR)

Pro Se

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10:00 AM

6:17-15251 Susan E Duynstee

Chapter 13

#31.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate All Personal and Real Property

MOVANT: SUSAN DUYNSTEE

EH__

Docket 13

Tentative Ruling:

07/11/2017

The Debtor has provided sufficient evidence of a change in financial circumstances to warrant granting of the Motion. Service is sufficient and no opposition has been filed. Based on the foregoing, the Court is inclined to GRANT the motion and continue the stay as to all creditors.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Susan E Duynstee

Represented By
Paul Y Lee

Movant(s):

Susan E Duynstee

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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2:00 PM

6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

#32.00 CONT Order (1) Setting Scheduling Hearing and Case Management Conference and (2) Requiring Status Report re **Another Meridian Company LLC**

From: 3/7/17

Also #33 & #34

EH__

Docket 630

***** VACATED *** REASON: CONTINUED TO 7/24/17 AT 3:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

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6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

#33.00 CONT Order (1) Setting Scheduling Hearing and Case Management Conference and (2) Requiring Status Report re **Inland Machinery, Inc**

From: 3/7/17

Also #32 & #34

EH__

Docket 630

***** VACATED *** REASON: CONTINUED TO 7/24/17 AT 3:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

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6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

#34.00 CONT Order (1) Setting Scheduling Hearing and Case Management Conference and (2) Requiring Status Report re **ASR Constructors Inc**

From: 3/7/17

Also #32 & #33

EH__

Docket 630

***** VACATED *** REASON: CONTINUED TO 7/24/17 AT 3:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

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6:16-14140 Welch Management Corporation

Chapter 11

#35.00 CONT Order (1) Setting Scheduling Hearing And Case Management Conference And (2) Requiring Status Report

From: 6/7/16, 8/30/16, 11/1/16,3/7/17, 4/18/17, 4/25/17, 5/9/17

EH__

Docket 4

***** VACATED *** REASON: CASE DISMISSED 6/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Welch Management Corporation

Represented By
Stephen R Wade
W. Derek May

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2:00 PM

6:17-13853 Malik Muhammad Asif and Zobia Asif

Chapter 7

#36.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 3660 Grand Avenue, Suite A, Chino Hills, CA 91709

MOVANT: ROIC CALIFORNIA LLC

EH__

Docket 60

Tentative Ruling:

7/11/17

The Court is inclined to GRANT relief pursuant to § 362(d)(1). GRANT requests under ¶¶ 2 and 6. GRANT request under ¶9 upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law. DENY requests under ¶ 3 and 7 for lack of cause shown. DENY alternative request for adequate protection as moot.

The case was converted to Chapter 7 after the motion was filed, however, so the hearing will need to be continued for service on Chapter 7 trustee.

APPERANCES REQUIRED.

Party Information

Debtor(s):

Malik Muhammad Asif

Represented By
Todd L Turoci

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CONT... Malik Muhammad Asif and Zobia Asif

Chapter 7

Joint Debtor(s):

Zobia Asif

Represented By
Todd L Turoci

Movant(s):

ROIC California, LLC

Represented By
Robert C Thorn

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#37.00 CONT U.S. Trustee Motion to dismiss or convert Chapter 11 Case

From: 6/27/17

Also #38

EH__

Docket 266

Tentative Ruling:

7/11/17

BACKGROUND

On May 11, 2016, Debtor filed a Chapter 11 voluntary petition. Debtor operated a medical account receivable collection service. On November 30, 2016, a Chapter 11 trustee was appointed.

On June 2, 2017, UST filed a motion to dismiss the Chapter 11 case for failure to pay quarterly fees of either \$9,750 or \$6,825, which were delinquent as of May 1, 2017. On June 13, 2017, the Chapter 11 trustee filed opposition to the motion to dismiss.

DISCUSSION

11 U.S.C. § 1112(b) provides that a case may be dismissed or converted for cause. Section 1112(b)(4) enumerates certain examples of cause, including "failure to pay

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CONT... Allied Injury Management, Inc. Chapter 11

any fees or charges required under chapter 123 of title 28." 28 USC § 1930(a)(6) imposed the statutory fees for Chapter 11 cases. Therefore, cause exists to convert the case when Chapter 11 quarterly fees are not paid.

The Chapter 11 trustee states, however, that \$6,000 of the past due fees were paid on June 12, 2017, and that the Chapter 11 trustee will pay the remaining balance.

TENTATIVE RULING

Chapter 11 trustee to inform the Court whether the Chapter 11 quarterly fees have been paid in full.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

United States Trustee (RS)

Represented By
Michael J Bujold
Abram Feuerstein esq
Everett L Green

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

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6:16-14273 Allied Injury Management, Inc.

Chapter 11

#38.00 CONT First Omnibus Objection of Debtor-In-Possession Allied Injury Management, Inc. Seeking Disallowance of Certain Proofs of Claim

From: 11/8/16, 12/6/16, 1/10/17, 3/7/17,4/4/17, 4/25/17, 6/27/17

Also #37

EH__

Docket 83

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

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6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01279 Allied Injury Management, Inc. v. One Stop Multi-Specialty Medical Group

#39.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01279. Complaint by Allied Injury Management, Inc. against One Stop Multi-Specialty Medical Group & Therapy, Inc., One Stop Multi-Specialty Medical Group, Inc., Nor Cal Pain Management Medical Group, Inc.. (Charge To Estate). Complaint for (1) Breach of Contract; (2) Account Stated; and (3) Unjust Enrichment Nature of Suit: (14 (Recovery of money/property - other))

From: 1/24/17, 3/7/17, 4/25/17, 6/27/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Nor Cal Pain Management Medical

Represented By
Maria K Pum
Maria C Armenta

One Stop Multi-Specialty Medical

Represented By
Maria K Pum
Maria C Armenta

One Stop Multi-Specialty Medical

Represented By
Maria K Pum
Maria C Armenta

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CONT... Allied Injury Management, Inc.

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Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

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6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01238 Allied Injury Management, Inc. v. De La Llana et al

#40.00 CONT Motion For Default Judgment Under LBR 7055-1 Against Defendants Sylvia De La Llana, M.D., an individual, and Myelin Diagnostics, LLC

From: 6/27/17

Also #41 - #45

EH__

Docket 65

Tentative Ruling:

7/11/17

FACTUAL BACKGROUND:

Allied Injury Management, Inc. ("Debtor") provides billing and collection services to medical service providers, including Myelin Diagnostics and Dr. Silvia De La Llana, CEO of Myelin Diagnostics ("Defendants"). As part of the written business agreement ("Written Agreement") with Defendants, Debtor in the normal course of business opened a for-the- benefit-of account ("FBO Account") for Defendants in which Debtor would deposit the money collected ("Receivables"). Pursuant to the Written Agreement, Debtor is entitled to a monthly fixed fee of \$12,800 and 45% of the monthly gross collection.

The Written Agreement has the following relevant clauses:

8.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8.10 Amendment. This Agreement may be amended only by a written instrument executed by each of the parties.

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8.14.5 Notwithstanding anything to the contrary stated above in this section, the right to arbitration shall not apply to a claim of either party seeking specific performance, injunctive relief, or other equity remedy as specifically provided in this agreement.

Trustee alleges an oral agreement was entered into in which Debtor advanced the portion of the Receivables to which Defendant was entitled to and now Debtor is entitled to 100% of the receivables ("Oral Agreement").

On May 11, 2016, Debtor filed a Chapter 11 bankruptcy. As a result Debtor had to close all pre-bankruptcy petition FBO Accounts. Debtor requested documents from Defendants in order to open new FBO Accounts. Defendant failed to supply the requested documents. As a result Debtor was unable to open the FBO Account. Debtor was in possession of checks to be deposited into the FBO Account. Debtor was unable to deposit and distribute the receivables pursuant to the Written and Oral Agreement. Trustee now asserts that Debtor was able to open an FBO account for Defendants.

Debtor filed a Complaint for Interpleader and Declaratory Relief ("Complaint") on September 21, 2016. On October 27, 2016, the Court granted an order allowing Debtor to deposit \$10,244.19 in the Court's Registry for Defendants.

Defendants were to file an Answer by October 24, 2016. To date, Defendants have not filed an Answer. On November 4, 2016, Default was entered against Defendants. On May 25, 2017, Chapter 11 Trustee ("Trustee") filed this Motion for Default Judgment ("Motion") and served Defendants.

Trustee requests that the Court establish (1) "Parties rights and obligations are governed by the [Written Agreement and Oral Agreement]" (2) Payment structure under the [Written Agreement and the Oral Agreement] and (3) a judgment authorizing Debtor to open an account and deposit the funds.

In support of this Motion, Trustee has filed a Declaration by Ms. Tina Shoemaker, employee of Debtor affiliate Titanium Resource Company.

DISCUSSION:

I. Subject Matter Jurisdiction

A court has subject matter jurisdiction over "all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11" and may

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enter appropriate orders and judgments. 28 U.S.C. § 157. Core proceedings include any "matters concerning the administration of the estate." 28 U.S.C. § 157 (b)(2).

The matter before the Court is regarding a matter concerning the Debtor's Estate.

II. Default

"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a).

Here, Defendants were to file an Answer by October 24, 2016. Defendants have not made an appearance in this case. Default was entered against Defendants on November 4, 2016.

III. Default Judgment

A court may grant default judgment after an entry of default. Fed. R. Civ. P. 55. A Motion for Default Judgment must also satisfy Local Bankruptcy Rule 7055-1 by identifying the party against whom default was entered, the date of entry of default, by stating if the defaulting party is an infant or incompetent person, by stating if the defaulting party is on active duty in the armed forces, and by serving the motion on the defaulting party pursuant to Fed. R. Civ. P. 55(b)(2). LBR 7055-1.

Here, Defendants have not appeared in the case. Default was entered against Defendants on November 4, 2016. Motion for Default Judgment was filed on May 25, 2017. The Motion named Defendants, stated the date of entry of default, and stated Defendants are not infants, incompetent, or on active duty. Defendants were served with Motion for Default Judgment on May 25, 107.

A default judgment is not a right but rather the court has discretion to enter a default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.1980). In exercising discretion the court may consider: (1) possibility of prejudice to the plaintiff, (2) merits of plaintiff's substantive claims, (3) sufficiency of complaint, (4) sum of money at stake in action, (5) possibility of dispute concerning material facts, (6) whether defendants default was product of excusable neglect, (7) strong public policy favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-1472 (9th Cir 1986).

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1. Possibility of prejudice to the Plaintiff

To determine whether there is prejudice to the plaintiff the court should look at whether the plaintiff's ability to pursue his claim will be hindered by not granting a default judgment. *Falk v. Allen*, 739 F.2d 461, 462 (9th Cir. 1984).

Here, Trustee is unable to collect the money it has earned without declaratory relief. As a result the Trustee is unable to take possession of the money and administer the estate.

Debtor has successfully petitioned the Court to deposit the checks into the Court's Registry. Trustee has not been able to recover the money earned by Debtor from collecting the Receivables and will not be able to recover until the Court orders release of the funds to the appropriate parties. Therefore, the possibility of prejudice to the Trustee is high and warrants default judgment.

2. Merits of plaintiff's substantive claims and sufficiency of complaint

The general rule is that after default is entered, the factual allegations asserted in the complaint are taken as true, with the exception of facts regarding damages. *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977). A pleading must contain a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2).

"Under the second and third Eitel factors the Court must examine whether the Plaintiff has plead facts sufficient to establish and succeed upon its claims." *Craigslis, Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1055 (N.D. Cal. 2010).

A. Declaratory Relief

A court "may declare the rights and other legal relations of any interested party seeking such declaration" when there is a case of actual controversy regarding a matter within its jurisdiction. 28 U.S.C. § 2201. Declaratory relief was created to protect defendants from adversarial threats of impending litigation by giving parties an opportunity to prevent potential damages. *Societe de Conditionnement en Aluminium v. Hunter Eng'g Co., Inc.*, 655 F.2d 938, 943 (9th Cir. 1981)(citing *Japan Gas Lighter Assoc. v. Ronson Corp.*, 257 F. Supp. 219, 237 (D.N.J 1966).

An actual controversy exists if "the facts alleged, under all the circumstances; show that there is a substantial controversy, between parties having adverse legal

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interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941). Once the court has determined whether there is an actual controversy, the court must decide whether to exercise jurisdiction and grant declaratory relief. *Principal Life Ins. Co. v. Robinson*, 394 F.3d 665, 668 (9th Cir. 2005).

Declaratory relief is appropriate if the judgment would "serve a useful purpose in clarifying and settling the legal relation in issue" and "terminate and afford relief from the uncertainty, insecurity and controversy giving rise to the proceeding." *Eureka Fed. Sav. & Loan Ass'n v. Am. Cas. Co.*, 873 F.2d 229, 231 (9th Cir. 1989). Furthermore, the court should avoid needless determination of state law, discourage forum shopping, and avoid duplicate litigation. *Gov't Emp. Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 (9th Cir. 1988).

Here, Trustee claims two controversies. The first is regarding the amount to be disbursed to each party from the Receivables collected by Debtor. The second controversy involves Defendants' assertion "that they have done all they are required to do under the agreements" and Debtor's assertion that "Defendants have failed to provide the necessary documents to open" the FBO Account.

When a plaintiff no longer wishes to or is no longer able to engage in the activity for which plaintiff seeks declaratory relief, no actual controversy exists. *Gator.com Corp. v. L.L. Bean, Inc.*, 398 F.3d 1125, 1129 (9th Cir. 2005). Given that Trustee has successfully opened an FBO Account for Defendants, the second controversy alleged does not satisfy the actual controversy requirement and does not warrant declaratory relief.

Trustee alleges that an actual controversy has arisen regarding the portion of the Receivables due to each party. Trustee has provided a copy of the Written Agreement and evidence of an Oral Agreement modifying said Written Agreement. The agreements each provide a different distribution of the Receivables collected by Debtor. The Written Agreement awards only 45% to the Debtor, while the Oral Agreement would award 100%, a 55% difference. However, to satisfy the actual controversy requirement, a claim must present substantial controversy and also present sufficient immediacy and reality.

A substantial controversy is present when a substantial monetary amount will change hands and when a legal claim concededly worth at least that much will be foregone. *Golden v. Cal. Emergency Physicians Med. Grp.*, 782 F.3d 1083, 1088-1089 (9th Cir. 2015).

A claim may present sufficient immediacy and reality when adjudicating an

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issue would end the lawsuit and would make the money be paid in the present. *Golden* at 1088-1089. In *Principal Life*, the Court found sufficient immediacy and reality was present when a party suffered an inability to make reasonable business decisions due to an unresolved lease agreement dispute. *Principal Life Ins. Co.* at 669.

Trustee's inability to dispose of the money earned by Debtor, currently deposited in the Court Registry appears to satisfy the "sufficient immediacy and reality" needed to order declaratory relief. Trustee is presently unable to pay itself the portion of the money Debtor has earned and cannot pay third parties. Similar to the plaintiff in *Principal Life* who could not make reasonable business decisions as a result of the dispute over the terms of the lease agreement, Trustee is unable to go on with daily business transactions due to the questions regarding the agreements. Trustee's effort to reorganize is being hindered by Defendants' failure to provide the documents requested in a timely manner so Trustee could open the FBO Account and by Defendants' subsequent failure to respond to the present Complaint.

Furthermore, under 11 U.S.C. § 704 (a)(1), it is the Trustee's duty to "close the estate as expeditiously as is compatible with the best interests of parties in interest." At this point the Trustee is unable to take possession of money which Debtor has earned and distribute the money among the parties in interest. Adjudicating this claim would allow for the money currently sitting in the Court Registry to be disbursed to the Trustee and subsequently to Debtor's creditors. Depending on the courts determination of whether Debtor is entitled to 45% or 100%, Trustee is unable to access between \$4,609.88 and \$10,244.19. By adjudicating this issue the Trustee could take control of the money, distribute the funds, and close the estate.

The Court finds that an actual controversy does exist and must now determine if it will exercise its discretion, based on the standard set in *Eureka*, and award declaratory relief.

A useful purpose may be served when declaratory relief would solve "a complex and long-lasting dispute over critical aspects of the parties rights and responsibilities under the treaty." *U.S. v. State of Wash.*, 759 F.2d 1353, 1364 (9th Cir. 1985). In *Newcal Indus., Inc.*, declaratory relief was found to have a useful purpose because it established a right to recover. *Newcal Indus., Inc. v. Ikon Office Sol.*, 513 F.3d 1038, 1057 (9th Cir. 2008). Declaratory relief may afford relief from uncertainty, insecurity and controversy when relief would settle uncertainty regarding the validity of a legal theory. *Newcal Indus., Inc.* at 1057.

Here, declaratory relief would serve a useful purpose in determining whether Debtor should be paid and the Trustee able to access money which may belong to the

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Debtor's Estate in accordance with the Written Agreement or the Oral Agreement. While the dispute at hand is not presented as complex or long-lasting, the uncertainty regarding this agreement has had a negative effect on the Trustee's ability to carry out his statutory duties. Currently the Receivables collected by Debtor are sitting in the Court Registry. Declaratory relief would establish the rights of Debtor and Defendants. By granting declaratory relief the Court will allow for the Receivables to be disbursed appropriately, thus allowing the Trustee to take possession of the funds.

The Court finds that declaratory relief would afford relief from uncertainty, insecurity, and controversy by determining whether the Oral Agreement alleged by Trustee or the Written Agreement should be the basis for distribution of the Receivables.

Based on the foregoing, declaratory relief is appropriate. The Court now turns to the Plaintiff's claim that the Oral Agreement, and not the Written Agreement, should guide the distribution of the Receivables.

B. State Contract Law: Oral Modification of Written Agreement

A written contract may be modified by an executed oral agreement. Cal. Civ. Code § 1698 (b). An executed oral agreement will serve as a modification even if the original contract requires that all changes be approved in writing. *Miller v. Brown*, 136 Cal. App. 2d 763, 775 (1955). An oral modification to a written agreement must be proved by a preponderance of the evidence. *Barrett v. Bank of Am.*, 183 Cal. App 3d 1362, 1371 (1980).

An executed contract is one which has been fully performed. *Fannucchi & Limi Farms v. United Agri Prod.*, 414 F.3d 1075, 1080 (9th Cir. 2005). "To come within the provision permitting modification by an executed oral agreement the plaintiffs' evidence must be sufficient to establish all the elements of a contract and a contract which is capable of execution, at least unilaterally." *Goodman v. Citizens Life & Cas. Ins. Co.*, 253 Cal. App. 2d 807, 817 (1967). Whether a written agreement has been modified by an executed oral agreement is a question of fact. *Keeble v. Brown*, 123 Cal. App. 2d 126, 132 (1954).

Here, Trustee presents the Written Agreement entered into by Debtor and Defendants. The Written Agreement states that Debtor will receive from Defendant monthly fixed fees totaling \$12,800 plus an additional 45% of the monthly gross collection. The Written Agreement contains a clause stating that the written agreement may only be amended in writing.

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However, Trustee provides evidence that an Oral Agreement was entered into in which Debtor was to advance to Defendant the amount of Receivables to which Defendant was entitled. In turn Debtor would be entitled to 100% of the Receivables.

As set forth in *Barrett*, Trustee has failed to prove by a preponderance of the evidence that the Oral Agreement exists and that said agreement was executed in order to serve as a valid modification pursuant to Cal. Civ. Code § 1698. As evidence that the Oral Agreement exists Trustee provides a declaration from Titanium Resource Company employee, Ms. Tina Shoemaker. Titanium Resource Company is an affiliate of Debtor. Ms. Shoemaker asserts that she is aware that the Oral Agreement supersedes the Written Agreement because she spoke with Defendants "on this subject on multiple occasions..." Trustee asserts that Defendant was advanced the amount due to Defendant under the Oral Agreement. However, while an oral agreement may be enforceable even if the contract requires all changes to be in writing, Trustee failed to plead the allegation in the Complaint or provide evidence of the payment made to Defendant. As such, Trustee has not established the oral agreement was fully performed.

3. Sum of money at stake in action

Under this factor, "the court must consider the amount of money at stake in relation to the seriousness of Defendant's conduct." *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F.Supp.2d 1172, 1176 (C.D. Cal. 2002). When plaintiff only seeks damages proportional to the breach of the contract, the amount of money at stake does not preclude default judgment. *NewGen, LLC v. SafeCig, LLC*, 840 F.3d 606, 617 (9th Cir. 2016). "Default judgment is disfavored where the sum of money at stake is too large or unreasonable in relation to defendants conduct." *Vogel v. Rite Aid Corp.*, 992 F.Supp.2d 998, 1012 (C.D. Cal. 2014)(citing *Truong Giang Corp. v. Twinstar Tea Corp.*, No. C 06-03594 JSW, 2007 WL 1545173, *12 (N.D. Cal. 2007).

Here, although the Trustee is seeking declaratory relief there is still money at stake. The Court's declaration could result in a monetary award to the Trustee of anywhere between \$4,609.88 and \$10,244.19. This amount is what has been collected by the Debtor in Receivables for the Defendants. The proportionately minimal sum of money at stake weighs in favor of entry of default judgment.

4. Possibility of dispute concerning material facts

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The general rule is that after default is entered, all well-pleaded factual allegations are taken as true, with the exception of facts regarding damages. *PepsiCo, Inc.* at 1177.

Defendants' were properly served and had a full opportunity to respond to the factual allegations asserted in the Complaint. Thus, default judgment may be appropriate.

5. Whether defendants' default was product of excusable neglect

When a party is properly served and ignores the deadline to respond to the complaint there is no excusable neglect. *NewGen, LLC v. SafeCig LLC*, 840 F.3d 606, 616 (9th Cir. 2016).

Here, Defendants were properly served with the Complaint on September 30, 2016. Defendants were served with the Motion for Default Judgment on May 25, 2017. Defendants have had ample opportunity to be heard and has yet to make an appearance in the present case. Therefore, Defendants' default is unlikely to be a result of excusable neglect.

6. Strong public policy favoring decisions on the merits

Generally default judgments are disfavored and a case should be decided on the merits. *Eitel*, 728 F.2d at 1472. When the Defendant makes the termination of a case impossible or impracticable, default judgment is permitted. *PepsiCo, Inc.* at 1174.

Here, Defendants were properly served and have not made any appearance in the case. Defendants' failure to make an appearance and failure to file any response or opposition weigh in favor of the entry of default judgment.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT Trustee's Motion for Default Judgment. The Court finds that distribution of the Receivables should be in accordance with the Written Agreement.

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Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Justin Paquette

Pro Se

Javier Torres

Pro Se

One Stop Multi-Specialty Medical

Pro Se

Nor Cal Pain Management Medical

Pro Se

Paramount Family Health Center

Pro Se

Myelin Diagnostics

Pro Se

Sylvia De La Llana

Pro Se

Shoreline Medical Group, Inc.

Pro Se

Sunkist Imaging Medical Center

Pro Se

Movant(s):

David M. Goodrich

Represented By
Victor A Sahn
Jason Balitzer

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

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#41.00 CONT Motion For Default Judgment Under LBR 7055-1 Against Defendant Dr. Javier Torres

From: 6/27/17

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Docket 71

Tentative Ruling:

I. Background Facts

On May 11, 2016, Allied Injury Management, Inc. ("Debtor") filed a voluntary petition under Chapter 11 commencing the current bankruptcy case. On September 21, 2016, the Debtor commenced this adversary proceeding seeking interpleader and declaratory relief (the "Complaint") against Dr. Javier Torres (the "Defendant"). The clerk entered default on November 4, 2016. On November 30, 2016, the Court ordered the appointment of a Chapter 11 Trustee, David M. Goodrich, (the "Trustee") to assume control of the estate. The Trustee was appointed on December 7, 2016, and filed this motion for default judgment only on the declaratory relief claim on May 25, 2017 (the "Motion"). No opposition has been filed.

According to the Complaint, the Debtor's business provided billing and collection services to medical providers pursuant to written and oral medical service agreements (collectively, "MSAs"). In this case, Debtor allegedly had an oral MSA with the Defendant to open a "for-the-benefit of account." The Debtor holds a security interest in and is the attorney-in-fact of this trust account, and it would deposit the Defendant's receivables into the account either before or after subtracting its fee. The Debtor collected \$7,063.73 in receivables. Debtor asserts that it has advanced an amount equal to the portion of the receivables to which the Defendant would be entitled and that the estate is entitled to 100% of these receivables per its verbal MSA

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with the Defendant. Upon commencing the bankruptcy case, Debtor had to close these accounts and open new accounts that comported with debtor-in-possession requirements imposed by the Trustee. The Debtor was unable to open an account for the Defendant because he did not provide the documentation required by the bank. Meanwhile, the Debtor was still collecting receivables for these providers but could not deposit the checks. Therefore, the Debtor filed the Complaint to establish the estate's rights and obligations under the MSAs notwithstanding its inability to open the required Trustee-approved bank accounts, and on October 10, 2016, filed a motion to deposit the collected checks with the Court's registry pending the outcome of the Complaint in order to ensure that the checks did not expire. The Court approved the Court registry order, and now, the Trustee seeks a default judgment on the declaratory relief claim.

II. Service

Service of process is governed by FRBP 7004(b)(1), which states that service must be made within the US by first class mail postage prepaid as follows:

Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

Notice was served on Dr. Javier Torres. Service is proper.

III. Default

Under the Federal Rules of Civil Procedure ("FRCP") 55, a default judgment is granted after the entry of default. The rule states, "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."

As stated above, the clerk entered default on November 4, 2016, satisfying this requirement.

In addition, the relevant requirements of the Local Bankruptcy Rules ("LBR") 7055-1 must be satisfied: (A) identity of the party whom default was entered and the

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date of entry of default, (B) whether the defaulting party is an infant or incompetent person, (C) whether the individual defendant is currently on active duty, (D) when individual is debtor..., (E) that notice of the motion has been served on defaulting party, if required by FRCP 55(b)(2).

These requirements have all been met.

IV. Default Judgment

Factors which may be considered by courts in exercising discretion as to the entry of a default judgment include:

(a) the possibility of prejudice to the plaintiff, (b) the merits of the plaintiff's substantive claim [declaratory relief in this case as governed by FRCP 57 and 28 U.S.C § 2201(a)], (c) the sufficiency of the complaint, (d) the sum of money at stake in the action, (e) the possibility of dispute concerning material facts, (f) whether the default was due to excusable neglect, and (g) the strong policy disfavoring decisions on the merits underlying the FRCP. (Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

a. Merits of Plaintiff's Substantive Claim & Sufficiency of Complaint

The general rule is that upon default the factual allegations of the complaint, excepting those relating to the amount of damages, will be taken as true. TeleVideo Systems Inc.v. Heidenthal 826 F.2d 915, 917-18 (9th Cir. 1987); See also Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir. 1977).

Further, a "default establishes the *well-pleaded* allegations of a complaint unless they are...contrary to facts judicially noticed or to uncontroverted material in the file. Facts that are not well pleaded include allegations that are 'made indefinite or erroneous by other allegations in the same complaint, allegations which are contrary to facts of which the court will take judicial notice, or which are not susceptible of proof by legitimate evidence, or which are contrary to uncontroverted material in the file of the case.'" In Re McGee, 359 B.R. 764, 772 (9th Cir. BAP 2006). Ultimately,

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claims that are not well-pleaded, meaning they allege no basis for liability, cannot support a default judgment. Marshall v. Baggett, 616 F.3d 849, 854 (8th Cir. 2010); See also Alan Neuman Productions Inc. v. Albright, 862 F.2d 1388, 1292 (9th Cir. 1988). In addition, failure to allege a valid claim against the defendant is not cured by evidence presented at a default "prove-up" hearing. Alan Neuman Productions 862 F.2d at 1393.

In this case, the Trustee is seeking declaratory relief in order to establish the estate's rights and obligations under the verbal MSA between Debtor and Defendant. Declaratory relief is governed by FRCP 57 and 28 U.S.C. § 2201(a), the Declaratory Judgment Act. There are two parts to achieving relief under the Declaratory Judgment Act.

First, the Trustee must demonstrate that it is entitled to relief by satisfying the elements of 28 U.S.C. § 2201(a). The Declaratory Judgment Act states, "In a case of actual controversy within its jurisdiction...any court of the US may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." Said case or controversy must refer to cases and controversies that are justiciable under Article III. American States Ins. Co v. Kearns, 15 F.3d 142, 143 (9th Cir. 1994). To demonstrate that a case or controversy exists, "a declaratory judgment plaintiff must prove that the facts alleged, 'under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" (28 U.S.C 2201(a)). The issues presented must be "definite and concrete, not hypothetical or abstract." Thomas v. Anchorage Equal Rights Com'n, 220 F.3d 1134, 1139 (9th Cir. 2000). Where a dispute hangs on "future contingencies that may or may not occur," Clinton v. Acequia, Inc. 94 F.3d 568, 572 (9th Cir. 1996), it may be too "impermissibly speculative" to present a justiciable controversy. Portland Police Ass'n v. City of Portland, 658 F.2d1272, 1273 (9th Cir. 1981).

Sufficient immediacy is present when the value of an item, like a lease agreement, would be significantly diminished if the dispute were not promptly resolved by the courts, and any continued attempts to ascertain the value by the parties

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without declaratory relief would likely waste time and resources. Principal Life Ins. Co. v. Robinson, 394 F.3d 665, 671-72 (9th Cir. 2005). However, if "adjudicating the question presented...will determine whether the lawsuit ends and the money is paid *in the present*," then sufficient immediacy and reality to warrant resolution is established. Golden v. California Emergency Physicians Medical Group, 782 F.3d 1083, 1088 (9th Cir. 2015). Immediacy is not present, however, when the "Plaintiffs appear to seek judicial declaration not as a preventative measure, but as a remedial measure to address previously alleged...claims." United Safeguard Distributors Association, Inc. v. Safeguard Business Systems, Inc., 145 F.3d 932 (C.D.Ca 2015).

Second, the court must determine that it is appropriate to exercise its discretion by weighing certain factors. By doing so, the court essentially "balances the concerns of judicial administration, comity and fairness." Chamberlain v. Allstate Ins. Co., 931 F.2d 1361, 1367 (9th Cir. 1991). The factors are as follows: (a) whether the declaratory action will settle all aspects of the controversy, (b) whether the declaratory action will serve a useful purpose in clarifying the legal relations at issue, (c) whether the declaratory action is being sought merely for the purposes of procedural fencing or to obtain a 'res judicata' advantage, (d) or whether the use of a declaratory action will result in entanglement between the federal and state court systems. (e) In addition, the district court might also consider the convenience of the parties, and (f) the availability and relative convenience of other remedies. American States Ins. Co v. Kearns. 15 F.3d 142, 143 (9th Cir. 1994); See also Brillhart v. Excess Ins. Co., 316 U.S. 491, 62 S.Ct. 1173, 86 L.Ed 1620 (1942).

"Under California law, a binding oral contract may arise 'when all the terms are definitely understood' and agreed to by both parties." Errico v. Pacific Capital Bank, N.A., 753 F.Supp.2d 1034, 1045 (N.D.Ca 2010), quoting Khajavi v. Feather River Anesthesia Medical Group, 84 Cal.App.4th 61,100 Cal.Rptr.2d 627 (Cal.App.3d Dist.2000).

ANALYSIS:

SUBSTANTIAL CONTROVERSY

When it comes to the requirements for declaratory relief under the first prong, the only evidence of a "substantial controversy, between parties having adverse legal interest, of sufficient immediacy and reality to warrant the issuance of a declaratory

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judgment" is shown in the Complaint stating that:

Defendants assert that they have done all they are required to do under the agreements and are entitled to a portion of the receivables. An actual controversy has arisen and now exists between Plaintiff and Defendants in that Plaintiff alleges Defendants have failed to provide Plaintiff the necessary documents to open the Unopened accounts and regarding the amounts to be disbursed to Defendants. (Complaint 6:6-11).

In Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, an actual controversy was found because once the plaintiff presented its claim, the defendant responded with "an equally definite claim that the alleged basic fact did not exist." Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U.S. 227, 242 (1937). The Court decided to grant declaratory relief because "such dispute is manifestly susceptible of judicial determination." Id. It calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present right upon established facts." Id. In this case, the Trustee asserts that the Defendant has failed to provide the necessary documentation as required by the MSA in order to open the account. However, Defendant asserts, according to the Complaint, that he has done all that is required under the MSA and is entitled to his receivables. These facts evidence a dispute that is not hypothetical or abstract. Rather, according to the Complaint, the controversy is real, ongoing, and relates to the legal rights of the parties to the receivables due under the MSA. Therefore, a substantial controversy is present.

SUFFICIENT IMMEDIACY

In the Complaint, the only evidence of sufficient immediacy was the assertion that the checks would expire if accounts were not opened immediately. This would allegedly prevent the estate from getting certain fees from the receivables, and the Trustee indicated that he would dismiss the Debtor's case if the unopened accounts remained unopened. However, because the checks have been deposited with the Court's registry and the bank account has now been opened in the Defendant's name, as stated in the Motion, these allegations are no longer true.

Additionally, the Trustee is now in charge of this bankruptcy proceeding and adversary proceeding, so there is no longer a threat that the case will be dismissed by him. Therefore, there is no longer an immediacy based upon a fear that the checks will lose their value because they have all been deposited with the Court, a fact which

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could establish immediacy under the standard utilized by the Court in Principal Life Ins. Co. v. Robinson. Because these facts are no longer true and no other facts are alleged in the Complaint, there is no support for the entry of declaratory relief based on the Complaint because there is no other immediacy pleaded. Therefore, under the standard for pleading under In re McGee above, this is not well-pleaded.

However, the new cause for immediacy, although not explicitly claimed as such in the Motion, is that the Trustee cannot deliver Defendant's share of the receivables because he has not received a judicial determination of the respective rights of Plaintiff and Defendant. (Motion 4:10-13). This is an issue because once money is deposited into the Court's registry under 28 U.S.C. § 2041, a party cannot withdraw the money while the case is proceeding. According to 28 U.S.C. § 2042, money deposited with the court can only be removed by a court order to the rightful owner upon "full proof of the right thereto." (28 U.S.C. § 2042).

Under the sufficient immediacy standard utilized in Golden v. California Emergency Physicians Medical Group, sufficient immediacy is established if the granting of relief will end the lawsuit and ensure payment occurs in the present. Golden, 782 F.3d at 1088. According to the Complaint, this is exactly what a default judgment for declaratory relief in this case would do because once the default judgment is granted, the lawsuit would end and the Trustee would be able to collect the funds out of the Court's registry. Therefore, a substantial controversy of sufficient immediacy is present in this case.

WEIGHING THE DISCRETIONARY FACTORS FOR DECLARATORY RELIEF

Once the elements of declaratory relief are established, the court weighs the following discretionary factors in order to determine if it should grant relief. The factors are as follows:

- (a) whether the declaratory action will settle all aspects of the controversy, (b) whether the declaratory action will serve a useful purpose in clarifying the legal relations at issue, (c) whether the declaratory action is being sought merely for the purposes of procedural fencing or to obtain a 'res judicata' advantage, (d) or whether the use of a declaratory action will result in entanglement between the federal and state court systems. (e) In addition, the district court might also consider the convenience of the parties, and (f) the availability and relative convenience of other remedies. American States Ins.

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Co v. Kearns, 15 F.3d 142, 143 (9th Cir. 1994); See also Brillhart v. Excess Ins. Co., 316 U.S. 491, 62 S.Ct. 1173, 86 L.Ed 1620 (1942).

Because there is evidence of a controversy, granting declaratory relief will likely settle this controversy and serve a useful purpose in clarifying the legal relations at issue. This judgment would establish the rights and obligations of each party under the MSA. In addition, it is convenient to the Trustee to receive a judgment now because it will provide access to the money deposited in the Court's registry after the time period for an appeal has passed. In re United Ins. Management, Inc., 14 F.3d 1380, 1386 (9th Cir. 1994) (A trustee "has a statutory obligation to 'investigate the financial affairs of the debtor, collect and reduce to money the property of the estate and close such estate as expeditiously as is compatible with the best interests of parties in interest.'") The judgment also does not appear to be sought merely for the purpose of procedural fencing because neither the Trustee nor the Debtor are a party to an action that involves the legal issues sought to be determined by this judgment. See Grand Trunk Western R. Co. v. Consolidated Rail Corp., 746 F.2d 323, 326 (6th Cir. 1984) (Holding that declaratory relief is not appropriate when it would interfere with state court litigation and is sought as a means to provide another arena for a race for res judicata). Therefore, these factors all weigh in favor of granting declaratory relief. Overall, the interests of judicial administration, comity, and fairness weigh in favor of GRANTING declaratory relief.

b. Amount of Damages

"The court does not have to presume the truth of any factual allegations related to the amount of damages." (TeleVideo Sys. Inc v. Heidenthal, 826 F.2d 915).

Further, According to FRCP 55, the amount of damages must be shown by affidavit.

Here, the amount of damages is supported by a declaration by Tina Shoemaker ("Shoemaker"), an employee of the Debtor, of the details of the oral MSA, which stipulates that the Trustee is entitled to \$7,063.73, which also happens to be 100% of the receivables, because the Debtor has already advanced to the Defendant an amount

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equal to the portion of the receivables to which Defendant would be entitled.

- c. Possibility of prejudice to the plaintiff if relief is denied, possibility of dispute as to any material facts in the case, whether the default was due to excusable neglect, and strong policy of FRCP favoring decisions on the merits**

There is the possibility of prejudice to the Trustee because without a judgment; he will be delayed from receiving and being able to distribute a portion of the bankruptcy estate. Further, the Trustee "has a statutory obligation to 'investigate the financial affairs of the debtor, collect and reduce to money the property of the estate and close such estate as expeditiously as is compatible with the best interests of parties in interest.'" In re United Ins. Management, Inc., 14 F.3d at 1386. Therefore, the possibility of prejudice to the Trustee in expeditiously closing the bankruptcy estate weighs in favor of granting a default judgment. In addition, there is no evidence that the entry of default was due to excusable neglect on the part of the Defendant. Therefore, this factor also weighs in favor of GRANTING default judgment.

TENATIVE RULING:

07/11/2017

Service: Proper

The Court will GRANT default judgment as the following discretionary factors weigh in favor of granting relief: (1) the possibility of prejudice to the plaintiff, (2) the merits of the plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the amount of damages and (5) whether the default was due to excusable neglect.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Justin Paquette

Pro Se

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Javier Torres Pro Se

One Stop Multi-Specialty Medical Pro Se

Nor Cal Pain Management Medical Pro Se

Paramount Family Health Center Pro Se

Myelin Diagnostics Pro Se

Sylvia De La Llana Pro Se

Shoreline Medical Group, Inc. Pro Se

Sunkist Imaging Medical Center Pro Se

Movant(s):

David M. Goodrich

Represented By
Victor A Sahn
Jason Balitzer

Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

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Docket 73

Tentative Ruling:

I. Background Facts

On May 11, 2016, Allied Injury Management, Inc. ("Debtor") filed a voluntary petition under Chapter 11 commencing the current bankruptcy case. On September 21, 2016, the Debtor commenced this adversary proceeding seeking interpleader and declaratory relief (the "Complaint") against Shoreline Medical Inc. (the "Defendant"). The clerk entered default on November 4, 2016. On November 30, 2016, the Court ordered the appointment of a Chapter 11 Trustee, David M. Goodrich, (the "Trustee") to assume control of the estate. The Trustee was appointed on December 7, 2016, and filed this motion for default judgment only on the declaratory relief claim on May 25, 2017 (the "Motion"). No opposition has been filed.

According to the Complaint, the Debtor's business provided billing and collection services to medical providers pursuant to written and oral medical service agreements (collectively, "MSAs"). In this case, Debtor allegedly had an oral MSA with the Defendant to open a "for-the-benefit of account." The Debtor holds a security interest in and is the attorney-in-fact of this trust account, and it would deposit the Defendant's receivables into the account either before or after subtracting its fee. The Debtor collected \$2,400 in receivables. Debtor asserts it is entitled to 50% of these receivables per its verbal MSA with the Defendant. Upon commencing the bankruptcy case, Debtor had to close these accounts and open new accounts that comported with

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debtor-in-possession requirements imposed by the Trustee. The Debtor was unable to open an account for the Defendant because it did not provide the documentation required by the bank. Meanwhile, the Debtor was still collecting receivables for these providers but could not deposit the checks. Therefore, the Debtor filed the Complaint to establish the estate's rights and obligations under the MSAs notwithstanding its inability to open the required Trustee-approved bank accounts, and on October 10, 2016, filed a motion to deposit the collected checks with the Court's registry pending the outcome of the Complaint in order to ensure that the checks did not expire. The Court approved the Court registry order, and now, the Trustee seeks a default judgment on the declaratory relief claim.

II. Service

Service of process is governed by FRBP 7004(b)(3), which states that service must be made within the US by first class mail postage prepaid as follows:

Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant..

Notice was served on Shoreline Medical and upon Randolph Taylor who is the agent for service of process according to the California Secretary of State records. Service is proper.

III. Default

Under the Federal Rules of Civil Procedure ("FRCP") 55, a default judgment is granted after the entry of default. The rule states, "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."

As stated above, the clerk entered default on November 4, 2016, satisfying this requirement.

In addition, the relevant requirements of the Local Bankruptcy Rules ("LBR")

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7055-1 must be satisfied: (A) identity of the party whom default was entered and the date of entry of default, (B) whether the defaulting party is an infant or incompetent person, (C) whether the individual defendant is currently on active duty, (D) when individual is debtor..., (E) that notice of the motion has been served on defaulting party, if required by FRCP 55(b)(2).

These requirements have all been met.

IV. Default Judgment

Factors which may be considered by courts in exercising discretion as to the entry of a default judgment include:

(a) the possibility of prejudice to the plaintiff, (b) the merits of the plaintiff's substantive claim [declaratory relief in this case as governed by FRCP 57 and 28 U.S.C § 2201(a)], (c) the sufficiency of the complaint, (d) the sum of money at stake in the action, (e) the possibility of dispute concerning material facts, (f) whether the default was due to excusable neglect, and (g) the strong policy disfavoring decisions on the merits underlying the FRCP. (Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

a. Merits of Plaintiff's Substantive Claim & Sufficiency of Complaint

The general rule is that upon default the factual allegations of the complaint, excepting those relating to the amount of damages, will be taken as true. TeleVideo Systems Inc.v. Heidenthal 826 F.2d 915, 917-18 (9th Cir. 1987); See also Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir. 1977).

Further, a "default establishes the *well-pleaded* allegations of a complaint unless they are...contrary to facts judicially noticed or to uncontroverted material in the file. Facts that are not well pleaded include allegations that are 'made indefinite or erroneous by other allegations in the same complaint, allegations which are contrary to facts of which the court will take judicial notice, or which are not susceptible of proof by legitimate evidence, or which are contrary to uncontroverted material in the file of the case.'" In Re McGee, 359 B.R. 764, 772 (9th Cir. BAP 2006). Ultimately,

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claims that are not well-pleaded, meaning they allege no basis for liability, cannot support a default judgment. Marshall v. Baggett, 616 F.3d 849, 854 (8th Cir. 2010); See also Alan Neuman Productions Inc. v. Albright, 862 F.2d 1388, 1292 (9th Cir. 1988). In addition, failure to allege a valid claim against the defendant is not cured by evidence presented at a default "prove-up" hearing. Alan Neuman Productions 862 F.2d at 1393.

In this case, the Trustee is seeking declaratory relief in order to establish the estate's rights and obligations under the verbal MSA between Debtor and Defendant. Declaratory relief is governed by FRCP 57 and 28 U.S.C. § 2201(a), the Declaratory Judgment Act. There are two parts to achieving relief under the Declaratory Judgment Act.

First, the plaintiff must demonstrate that it is entitled to relief by satisfying the elements of 28 U.S.C. § 2201(a). The Declaratory Judgment Act states, "In a case of actual controversy within its jurisdiction...any court of the US may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." Said case or controversy must refer to cases and controversies that are justiciable under Article III. American States Ins. Co v. Kearns, 15 F.3d 142, 143 (9th Cir. 1994). To demonstrate that a case or controversy exists, "a declaratory judgment plaintiff must prove that the facts alleged, 'under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" (28 U.S.C 2201(a)). The issues presented must be "definite and concrete, not hypothetical or abstract." Thomas v. Anchorage Equal Rights Com'n, 220 F.3d 1134, 1139 (9th Cir. 2000). Where a dispute hangs on "future contingencies that may or may not occur," Clinton v. Acequia, Inc. 94 F.3d 568, 572 (9th Cir. 1996), it may be too "impermissibly speculative" to present a justiciable controversy. Portland Police Ass'n v. City of Portland, 658 F.2d1272, 1273 (9th Cir. 1981).

Sufficient immediacy is present when the value of an item, like a lease agreement, would be significantly diminished if the dispute were not promptly resolved by the courts, and any continued attempts to ascertain the value by the parties

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without declaratory relief would likely waste time and resources. Principal Life Ins. Co. v. Robinson, 394 F.3d 665, 671-72 (9th Cir. 2005). However, if "adjudicating the question presented...will determine whether the lawsuit ends and the money is paid *in the present*," then sufficient immediacy and reality to warrant resolution is established. Golden v. California Emergency Physicians Medical Group, 782 F.3d 1083, 1088 (9th Cir. 2015). Immediacy is not present, however, when the "Plaintiffs appear to seek judicial declaration not as a preventative measure, but as a remedial measure to address previously alleged...claims." United Safeguard Distributors Association, Inc. v. Safeguard Business Systems, Inc., 145 F.3d 932 (C.D.Ca 2015).

Second, the court must determine that it is appropriate to exercise its discretion by weighing certain factors. By doing so, the court essentially "balances the concerns of judicial administration, comity and fairness." Chamberlain v. Allstate Ins. Co., 931 F.2d 1361, 1367 (9th Cir. 1991). The factors are as follows: (a) whether the declaratory action will settle all aspects of the controversy, (b) whether the declaratory action will serve a useful purpose in clarifying the legal relations at issue, (c) whether the declaratory action is being sought merely for the purposes of procedural fencing or to obtain a 'res judicata' advantage, (d) or whether the use of a declaratory action will result in entanglement between the federal and state court systems. (e) In addition, the district court might also consider the convenience of the parties, and (f) the availability and relative convenience of other remedies. American States Ins. Co v. Kearns. 15 F.3d 142, 143 (9th Cir. 1994); See also Brillhart v. Excess Ins. Co., 316 U.S. 491, 62 S.Ct. 1173, 86 L.Ed 1620 (1942).

"Under California law, a binding oral contract may arise 'when all the terms are definitely understood' and agreed to by both parties." Errico v. Pacific Capital Bank, N.A., 753 F.Supp.2d 1034, 1045 (N.D.Ca 2010), quoting Khajavi v. Feather River Anesthesia Medical Group, 84 Cal.App.4th 61,100 Cal.Rptr.2d 627 (Cal.App.3d Dist.2000).

ANALYSIS:

SUBSTANTIAL CONTROVERSY

When it comes to the requirements for declaratory relief under the first prong, the only evidence of a "substantial controversy, between parties having adverse legal interest, of sufficient immediacy and reality to warrant the issuance of a declaratory

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judgment" is shown in the Complaint stating that:

Defendants assert that they have done all they are required to do under the agreements and are entitled to a portion of the receivables. An actual controversy has arisen and now exists between Plaintiff and Defendants in that Plaintiff alleges Defendants have failed to provide Plaintiff the necessary documents to open the Unopened accounts and regarding the amounts to be disbursed to Defendants. (Complaint 6:6-11).

In Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, an actual controversy was found because once the plaintiff presented its claim, the defendant responded with "an equally definite claim that the alleged basic fact did not exist." Aetna Life Ins. Co. of Hartford, Conn. v. Haworth, 300 U.S. 227, 242 (1937). The Court decided to grant declaratory relief because "such dispute is manifestly susceptible of judicial determination." Id. It calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present right upon established facts." Id. In this case, the Trustee asserts that the Defendant has failed to provide the necessary documentation as required by the MSA in order to open the account. However, Defendant asserts, according to the Complaint, that it has done all that is required under the MSA and is entitled to its receivables. These facts evidence a dispute that is not hypothetical or abstract. Rather, according to the Complaint, the controversy is real, ongoing, and relates to the legal rights of the parties to the receivables due under the MSA. Therefore, a substantial controversy is present.

SUFFICIENT IMMEDIACY

In the Complaint, the only evidence of sufficient immediacy was the assertion that the checks would expire if accounts were not opened immediately. This would allegedly prevent the estate from getting certain fees from the receivables, and the Trustee indicated that he would dismiss the Debtor's case if the unopened accounts remained unopened. However, because the checks have been deposited with the Court's registry and the bank account has now been opened in the Defendant CEO's name, as stated in the Motion, these allegations are no longer true.

Additionally, the Trustee is now in charge of this bankruptcy proceeding and adversary proceeding, so there is no longer a threat that the case will be dismissed by him. Therefore, there is no longer an immediacy based upon a fear that the checks will lose their value because they have all been deposited with the Court, a fact which could establish immediacy under the standard utilized by the Court in Principal Life

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Ins. Co. v. Robinson. Because these facts are no longer true and no other facts are alleged in the Complaint, there is no support for the entry of declaratory relief based on these allegations because there is no other immediacy pleaded. Therefore, under the standard for pleading under In re McGee above, this is not well-pleaded.

However, the new cause for immediacy, although not explicitly claimed as such in the Motion, is that the Trustee cannot deliver Defendant's share of the receivables because he has not received a judicial determination of the respective rights of Plaintiff and Defendant. (Motion 4:10-13). This is an issue because once money is deposited into the Court's registry under 28 U.S.C. § 2041, a party cannot withdraw the money while the case is proceeding. According to 28 U.S.C. § 2042, money deposited with the court can only be removed by a court order to the rightful owner upon "full proof of the right thereto." (28 U.S.C. § 2042).

Under the sufficient immediacy standard utilized in Golden v. California Emergency Physicians Medical Group, sufficient immediacy is established if the granting of relief will end the lawsuit and ensure payment occurs in the present. Golden, 782 F.3d at 1088. According to the Complaint, this is exactly what a default judgment for declaratory relief in this case would do because once the default judgment is granted, the lawsuit would end and the Trustee would be able to collect the funds out of the Court's registry. Therefore, a substantial controversy of sufficient immediacy is present in this case.

WEIGHING THE DISCRETIONARY FACTORS FOR DECLARATORY RELIEF

Once the elements of declaratory relief are established, the court weighs the following discretionary factors in order to determine if it should grant relief. The factors are as follows:

- (a) whether the declaratory action will settle all aspects of the controversy, (b) whether the declaratory action will serve a useful purpose in clarifying the legal relations at issue, (c) whether the declaratory action is being sought merely for the purposes of procedural fencing or to obtain a 'res judicata' advantage, (d) or whether the use of a declaratory action will result in entanglement between the federal and state court systems. (e) In addition, the district court might also consider the convenience of the parties, and (f) the availability and relative convenience of other remedies. American States Ins. Co v. Kearns. 15 F.3d 142, 143 (9th Cir. 1994); See also Brillhart v. Excess

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Ins. Co., 316 U.S. 491, 62 S.Ct. 1173, 86 L.Ed 1620 (1942).

Because there is evidence of a controversy, granting declaratory relief will likely settle this controversy and serve a useful purpose in clarifying the legal relations at issue. This judgment would establish the rights and obligations of each party under the MSA. In addition, it is convenient to the Trustee to receive a judgment now because it will provide access to the money deposited in the Court's registry after the time period for an appeal has passed. In re United Ins. Management, Inc., 14 F.3d 1380, 1386 (9th Cir. 1994) (A trustee "has a statutory obligation to 'investigate the financial affairs of the debtor, collect and reduce to money the property of the estate and close such estate as expeditiously as is compatible with the best interests of parties in interest.'")

The judgment also does not appear to be sought merely for the purpose of procedural fencing because neither the Trustee nor the Debtor are a party to an action that involves the legal issues sought to be determined by this judgment. See Grand Trunk Western R. Co. v. Consolidated Rail Corp., 746 F.2d 323, 326 (6th Cir. 1984) (Holding that declaratory relief is not appropriate when it would interfere with state court litigation and is sought as a means to provide another arena for a race for res judicata). Therefore, these factors all weigh in favor of granting declaratory relief. Overall, the interests of judicial administration, comity, and fairness weigh in favor of GRANTING declaratory relief.

b. Amount of Damages

"The court does not have to presume the truth of any factual allegations related to the amount of damages." (TeleVideo Sys. Inc v. Heidenthal, 826 F.2d 915).

Further, According to FRCP 55, the amount of damages must be shown by affidavit.

Here, the amount of damages is supported by a declaration by Tina Shoemaker ("Shoemaker"), an employee of the Debtor, of the details of the oral MSA, which stipulates that the Trustee is entitled to \$1,200, which also happens to be 50% of the receivables, as a fee.

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- c. Possibility of prejudice to the plaintiff if relief is denied, possibility of dispute as to any material facts in the case, whether the default was due to excusable neglect, and strong policy of FRCP favoring decisions on the merits**

There is the possibility of prejudice to the Trustee because without a judgment; he will be delayed from receiving and being able to distribute a portion of the bankruptcy estate. Further, the Trustee "has a statutory obligation to 'investigate the financial affairs of the debtor, collect and reduce to money the property of the estate and close such estate as expeditiously as is compatible with the best interests of parties in interest.'" In re United Ins. Management, Inc., 14 F.3d at 1386. Therefore, the possibility of prejudice to the Trustee in expeditiously closing the bankruptcy estate weighs in favor of granting a default judgment. In addition, there is no evidence that the entry of default was due to excusable neglect on the part of the Defendant. Therefore, this factor also weighs in favor of GRANTING default judgment.

TENTATIVE RULING:

07/11/2017

Service: Proper

The Court will GRANT default judgment as the following discretionary factors weigh in favor of granting relief: (1) the possibility of prejudice to the plaintiff, (2) the merits of the plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the amount of damages and (5) whether the default was due to excusable neglect.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Justin Paquette

Pro Se

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Javier Torres	Pro Se
One Stop Multi-Specialty Medical	Pro Se
Nor Cal Pain Management Medical	Pro Se
Paramount Family Health Center	Pro Se
Myelin Diagnostics	Pro Se
Sylvia De La Llana	Pro Se
Shoreline Medical Group, Inc.	Pro Se
Sunkist Imaging Medical Center	Pro Se

Movant(s):

David M. Goodrich	Represented By Victor A Sahn Jason Balitzer
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Plaintiff(s):

Allied Injury Management, Inc.	Represented By Alan W Forsley
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Trustee(s):

David M Goodrich (TR)	Represented By Mark S Horoupian Jason Balitzer Victor A Sahn
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Adv#: 6:16-01238 Allied Injury Management, Inc. v. De La Llana et al

#43.00 CONT Motion For Default Judgment Under LBR 7055-1 Against Defendant Justin Paquette

From: 6/27/17

Also #40 - #45

EH__

Docket 69

Tentative Ruling:

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Factual Background:

Allied Injury Management, Inc. ("Debtor") provides billing and collection services to medical service providers, including Justin Paquette ("Defendant"). As part of the written business agreement ("Written Agreement") with Defendant, Debtor in the normal course of business opened a for-the-benefit-of account ("FBO Account") for Defendant in which Debtor would deposit the money collected ("Receivables"). Pursuant to the Written Agreement, Debtor is entitled to 50% of the monthly gross collection.

The Written Agreement has the following relevant clauses:

8.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8.14.5 Notwithstanding anything to the contrary stated above in this section, the right to arbitration shall not apply to a claim of either party seeking specific performance, injunctive relief, or other equity remedy as specifically provided in this agreement.

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Exhibit E. Manager Compensation Items 1 through 5 above total an amount equal to FIFTY percent (50%) of the Gross Collections of the Licensee each month.

On May 11, 2016, Debtor filed a Chapter 11 bankruptcy. As a result Debtor had to close all pre-bankruptcy petition FBO Accounts. Debtor requested documents from Defendant in order to open a new FBO Account. Defendant failed to supply the requested documents. As a result Debtor was unable to open the FBO Account. Debtor was in possession of checks to be deposited into the FBO Account. Debtor was unable to deposit and distribute the receivables pursuant to the Written Agreement. Trustee now asserts that Debtor was able to open an FBO account for Defendant.

Debtor filed a Complaint for Interpleader and Declaratory Relief ("Complaint") on September 21, 2016. On October 27, 2016, the Court granted an order allowing Debtor to deposit \$666.00 in the Court's Registry for Defendant.

Defendant was to file an Answer by October 24, 2016. To date, Defendant has not filed an Answer. On November 4, 2016, Default was entered against Defendant. On May 25, 2017, Chapter 11 Trustee ("Trustee") filed this Motion for Default Judgment ("Motion") and served Defendant.

Trustee requests that the Court establish (1) "Parties rights and obligations are governed by the [Written Agreement]" (2) Payment structure under the [Written Agreement] and (3) a judgment authorizing Debtor to open an account and deposit the funds.

In support of this Motion, Trustee has filed a Declaration by Ms. Tina Shoemaker, employee of Debtor affiliate Titanium Resource Company.

Discussion:

I. Subject Matter Jurisdiction

A court has subject matter jurisdiction over "all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11" and may enter appropriate orders and judgments. 28 U.S.C. § 157. Core proceedings include any "matters concerning the administration of the estate." 28 U.S.C. § 157 (b)(2).

The matter before the Court is regarding a matter concerning the Debtor's Estate.

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II. Default

"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a).

Here, Defendant was to file an Answer by October 24, 2016. Defendant has not made an appearance in this case. Default was entered against Defendant on November 4, 2016.

III. Default Judgment

A court may grant default judgment after an entry of default. Fed. R. Civ. P. 55. A Motion for Default Judgment must also satisfy Local Bankruptcy Rule 7055-1 by identifying the party against whom default was entered, the date of entry of default, by stating if the defaulting party is an infant or incompetent person, by stating if the defaulting party is on active duty in the armed forces, and by serving the motion on the defaulting party pursuant to Fed. R. Civ. P. 55(b)(2). LBR 7055-1.

Here, Defendant has not appeared in the case. Default was entered against Defendant on November 4, 2016. Motion for Default Judgment was filed on May 25, 2017. The Motion named the Defendant, stated the date of entry of default, and stated Defendant is not an infant, incompetent, or on active duty. Defendant was served with Motion for Default Judgment on May 25, 107.

A default judgment is not a right but rather the court has discretion to enter a default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.1980). In exercising discretion the court may consider: (1) possibility of prejudice to the plaintiff, (2) merits of plaintiff's substantive claims, (3) sufficiency of complaint, (4) sum of money at stake in action, (5) possibility of dispute concerning material facts, (6) whether defendants default was product of excusable neglect, (7) strong public policy favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-1472 (9th Cir 1986).

1. Possibility of prejudice to the Plaintiff

To determine whether there is prejudice to the plaintiff the court should look at whether the plaintiff's ability to pursue his claim will be hindered by not granting a

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default judgment. *Falk v. Allen*, 739 F.2d 461, 462 (9th Cir. 1984).

Here, Trustee is unable to collect the money Debtor has earned without declaratory relief. As a result the Trustee is unable to take possession of the money and administer the estate.

Debtor has successfully petitioned the Court to deposit the checks into the Court's Registry. Trustee has not been able to recover the money earned by Debtor from collecting the Receivables and will not be able to recover until the Court orders release of the funds to the appropriate parties. Therefore, the possibility of prejudice to the Trustee is high and warrants default judgment.

2. Merits of plaintiff's substantive claims and sufficiency of complaint

The general rule is that after default is entered, the factual allegations asserted in the complaint are taken as true, with the exception of facts regarding damages. *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977). A pleading must contain a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2).

"Under the second and third Eitel factors the Court must examine whether the Plaintiff has plead facts sufficient to establish and succeed upon its claims." *Craigslis, Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1055 (N.D. Cal. 2010).

A. *Declaratory Relief*

A court "may declare the rights and other legal relations of any interested party seeking such declaration" when there is a case of actual controversy regarding a matter within its jurisdiction. 28 U.S.C. § 2201. Declaratory relief was created to protect defendants from adversarial threats of impending litigation by giving parties an opportunity to prevent potential damages. *Societe de Conditionnement en Aluminium v. Hunter Eng'g Co., Inc.*, 655 F.2d 938, 943 (9th Cir. 1981)(citing *Japan Gas Lighter Assoc. v. Ronson Corp.*, 257 F. Supp. 219, 237 (D.N.J 1966).

An actual controversy exists if "the facts alleged, under all the circumstances; show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941). Once the court has determined whether there is an actual controversy, the court must decide whether to exercise jurisdiction and grant declaratory relief. *Principal Life Ins. Co. v.*

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Robinson, 394 F.3d 665, 668 (9th Cir. 2005).

Declaratory relief is appropriate if the judgment would "serve a useful purpose in clarifying and settling the legal relation in issue" and "terminate and afford relief from the uncertainty, insecurity and controversy giving rise to the proceeding." *Eureka Fed. Sav. & Loan Ass'n v. Am. Cas. Co.*, 873 F.2d 229, 231 (9th Cir. 1989). Furthermore, the court should avoid needless determination of state law, discourage forum shopping, and avoid duplicate litigation. *Gov't Emp. Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 (9th Cir. 1988).

Here, Trustee claims two controversies. The first is regarding the amount to be disbursed to each party from the Receivables collected by Debtor. The second controversy involves Defendant's assertion "that they have done all they are required to do under the agreements" and Debtor's assertion that "Defendants have failed to provide the necessary documents to open" the FBO Account.

When a plaintiff no longer wishes to or is no longer able to engage in the activity for which plaintiff seeks declaratory relief, no actual controversy exists. *Gator.com Corp. v. L.L. Bean, Inc.*, 398 F.3d 1125, 1129 (9th Cir. 2005). Given that Trustee has successfully opened an FBO Account for Defendant, the second controversy alleged does not satisfy the actual controversy requirement and does not warrant declaratory relief.

In the Complaint, Debtor alleges that an actual controversy has arisen regarding the portion of the Receivables due to each party. Under *Geddes*, once default has been entered the factual allegations stated in the complaint are taken as true. Debtor has provided a copy of the Written Agreement, which states the compensation for Debtor's work is 50% of the Receivables.

A substantial controversy is present when a substantial monetary amount will change hands and when a legal claim concededly worth at least that much will be foregone. *Golden v. Cal. Emergency Physicians Med. Grp.*, 782 F.3d 1083, 1088-1089 (9th Cir. 2015).

A claim may present sufficient immediacy and reality when adjudicating an issue would end the lawsuit and would make the money be paid in the present. *Golden* at 1088-1089. In *Principal Life*, the Court found sufficient immediacy and reality was present when a party suffered an inability to make reasonable business decisions due to an unresolved lease agreement dispute. *Principal Life Ins. Co.* at 669.

Trustee's inability to dispose of the money earned by Debtor, currently deposited in the Court Registry appears to satisfy the "sufficient immediacy and reality" needed to order declaratory relief. Trustee is presently unable to pay itself the

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portion of the money due to Debtor and cannot pay third parties. Similar to the plaintiff in *Principal Life* who could not make reasonable business decisions as a result of the dispute over the terms of the lease agreement, Trustee is unable to go on with daily business transactions due to the dispute over the portion of the Receivables due to each party. Trustee's effort to reorganize is being hindered by Defendant's failure to provide the documents requested in a timely manner so Trustee could open the FBO Account and by Defendant's subsequent failure to respond to the present Complaint.

Furthermore, under 11 U.S.C. § 704 (a)(1), it is the Trustee's duty to "close the estate as expeditiously as is compatible with the best interests of the parties in interest." At this point the Trustee is unable to take possession of money which Debtor has earned and distribute the money among the parties in interest. Adjudicating this claim would allow for the money currently sitting in the Court Registry to be disbursed to the Trustee and subsequently to Debtor's creditors. The Trustee is unable to access \$333.00. By adjudicating this issue the Trustee could take control of the money, distribute the funds, and close the estate.

The Court finds that an actual controversy does exist and must now determine if it will exercise its discretion, based on the standard set in *Eureka*, and award declaratory relief.

A useful purpose may be served when declaratory relief would solve "a complex and long-lasting dispute over critical aspects of the parties rights and responsibilities under the treaty." *U.S. v. State of Wash.*, 759 F.2d 1353, 1364 (9th Cir. 1985). In *Newcal Indus., Inc.*, declaratory relief was found to have a useful purpose because it established a right to recover. *Newcal Indus., Inc. v. Ikon Office Sol.*, 513 F.3d 1038, 1057 (9th Cir. 2008). Declaratory relief may afford relief from uncertainty, insecurity and controversy when relief would settle uncertainty regarding the validity of a legal theory. *Newcal Indus., Inc.* at 1057.

Here, declaratory relief would serve a useful purpose in determining whether Debtor should be paid according to the Written Agreement and by allowing Trustee to take possession of the money and the Trustee will be able to distribute the Receivables pursuant to the written agreement in the future. While the dispute at hand is not presented as complex or long-lasting, the uncertainty regarding this agreement has had a negative effect on the Trustee's ability to carry out his statutory duties. Currently the Receivables collected by Debtor are sitting in the Court Registry and will not be disbursed until a determination regarding the rights of each party is determined by the Court. By granting declaratory relief the Court will allow for the Receivables to be

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disbursed appropriately, thus allowing the Trustee to take possession of the funds.

Based on the foregoing, declaratory relief is appropriate. The Court now turns to determine if the Receivables should be distributed according to the Written Agreement.

Trustee has provided in support of this Motion a copy of the Written Agreement between Debtor and Defendant. The Written Agreement outlines a detailed payment schedule for Debtor's services. The payment schedule awards Debtor 50% of the monthly gross collection.

There are sufficient facts regarding the merits and potential success of the substantive claims. This weighs in favor of granting default judgment.

3. Sum of money at stake in action

Under this factor, "the court must consider the amount of money at stake in relation to the seriousness of Defendant's conduct." *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F.Supp.2d 1172, 1176 (C.D. Cal. 2002). When plaintiff only seeks damages proportional to the breach of the contract, the amount of money at stake does not preclude default judgment. *NewGen, LLC v. SafeCig, LLC*, 840 F.3d 606, 617 (9th Cir. 2016). "Default judgment is disfavored where the sum of money at stake is too large or unreasonable in relation to defendants conduct." *Vogel v. Rite Aid Corp.*, 992 F.Supp.2d 998, 1012 (C.D. Cal. 2014)(citing *Truong Giang Corp. v Twinstar Tea Corp.*, No. C 06-03594 JSW, 2007 WL 1545173, *12 (N.D. Cal. 2007).

Here, although Trustee is seeking declaratory relief there is still money at stake. The Court's declaration would award \$333.00 to the Trustee. The proportionately minimal sum of money at stake weighs in favor of entry of default judgment.

4. Possibility of dispute concerning material facts

The general rule is that after default is entered, all well-pleaded factual allegations are taken as true, with the exception of facts regarding damages. *PepsiCo, Inc.* at 1177.

Defendant was properly served and had a full opportunity to respond to the factual allegations asserted in the Complaint. Thus, default judgment may be appropriate.

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5. Whether defendant's default was product of excusable neglect

When a party is properly served and ignores the deadline to respond to the complaint there is no excusable neglect. *NewGen, LLC v. SafeCig LLC*, 840 F.3d 606, 616 (9th Cir. 2016).

Here, Defendant was properly served with the Complaint on September 30, 2016. Defendant was served with the Motion for Default Judgment on May 25, 2017. Defendant has had ample opportunity to be heard and has yet to make an appearance in the present case.

6. Strong public policy favoring decisions on the merits

Generally default judgments are disfavored and a case should be decided on the merits. *Eitel*, 728 F.2d at 1472. When the Defendant makes the termination of a case impossible or impracticable, default judgment is permitted. *PepsiCo, Inc.* at 1174.

Here, Defendant was properly served and has not made an appearance in the case. Defendant's failure to make an appearance and failure to file any response or opposition weigh in favor of the entry of default judgment.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT Trustee's Motion for Default Judgment.

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Justin Paquette

Pro Se

Javier Torres

Pro Se

One Stop Multi-Specialty Medical

Pro Se

Nor Cal Pain Management Medical

Pro Se

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Paramount Family Health Center	Pro Se
Myelin Diagnostics	Pro Se
Sylvia De La Llana	Pro Se
Shoreline Medical Group, Inc.	Pro Se
Sunkist Imaging Medical Center	Pro Se

Movant(s):

David M. Goodrich	Represented By Victor A Sahn Jason Balitzer
-------------------	---

Plaintiff(s):

Allied Injury Management, Inc.	Represented By Alan W Forsley
--------------------------------	----------------------------------

Trustee(s):

David M Goodrich (TR)	Represented By Mark S Horoupian Jason Balitzer Victor A Sahn
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6:16-14273 Allied Injury Management, Inc.

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Adv#: 6:16-01238 Allied Injury Management, Inc. v. De La Llana et al

#44.00 CONT Motion For Default Judgment Under LBR 7055-1 Against Defendant Sunkist Imaging Medical Center

From: 6/27/17

Also #40 - #45

EH__

Docket 67

Tentative Ruling:

07/11/17

FACTUAL BACKGROUND:

Allied Injury Management, Inc. ("Debtor") provides billing and collection services to medical service providers, including Sunkist Imaging Medical Center, a California professional corporation ("Defendant"). Debtor's business provided billing and collection services pursuant to written and oral medical service agreements (collectively, "MSAs"). Under the MSAs, the Debtor agreed to collect receivables owed to providers, retain a portion of the collected receivables as compensation, and remit the balance to the providers. The Debtor's principal assets are the MSAs and the receivables owed thereunder. On September 21, 2016, the Debtor commenced this adversary proceeding seeking interpleader and declaratory relief (the "Complaint") against the Defendant. The clerk entered default on November 4, 2016. On November 30, 2016, the Court ordered the appointment of a Chapter 11 Trustee, David M. Goodrich, (the "Trustee") to assume control of the estate. The Trustee was appointed on December 7, 2016, and filed this motion for default judgment only on the declaratory relief claim on May 25, 2017 (the "Motion"). No opposition has been filed.

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The Defendant and Debtor have a written MSA (the "Written Agreement). Pursuant to the Written Agreement, Debtor is entitled to 30% of the monthly gross receivables ("Receivables"). Presently, the Trustee has deposited the sum of \$1,100 of the Defendant's Receivables in the Court's registry. Pursuant to the MSA, the Trustee asserts that the Estate is entitled to \$330, or 30% of the Receivables.

The Trustee is seeking a judgment authorizing disbursement of the Receivables out of the Court's registry; permitting the Trustee to take possession of the Receivables and authorizing the Trustee to deposit the same in a for-the-benefit account associated with the Defendant; and authorizing the Trustee to administer the Receivables in accordance with the medical service agreement entered into between the Debtor and Defendant.

DISCUSSION:

I. Default

"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a).

Here, Defendant was to file an Answer by October 24, 2016. Defendant has not made an appearance in this case. Default was entered against Defendant on November 4, 2016.

II. Default Judgment

A court may grant default judgment after an entry of default. Fed. R. Civ. P. 55. A Motion for Default Judgment must also satisfy Local Bankruptcy Rule 7055-1 by identifying the party against whom default was entered, the date of entry of default, by stating if the defaulting party is an infant or incompetent person, by stating if the defaulting party is on active duty in the armed forces, and by serving the motion on the defaulting party pursuant to Fed. R. Civ. P. 55(b)(2). LBR 7055-1.

Here, Defendant has not appeared in the case. Default was entered against Defendant on November 4, 2016. Motion for Default Judgment was filed on May 25, 2017. The Motion named Defendant, stated the date of entry of default, stated Defendant is not an infants, incompetent, or on active duty. Defendant was served

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with Motion for Default Judgment on May 25, 2017.

A default judgment is not a right but rather the court has discretion to enter a default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.1980). In exercising discretion the court may consider: (1) possibility of prejudice to the plaintiff, (2) merits of plaintiff's substantive claims, (3) sufficiency of complaint, (4) sum of money at stake in action, (5) possibility of dispute concerning material facts, (6) whether defendants default was product of excusable neglect, (7) strong public policy favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-1472 (9th Cir 1986).

1. Possibility of prejudice to the Plaintiff

To determine whether there is prejudice to the plaintiff the court should look at whether the plaintiff's ability to pursue his claim will be hindered by not granting a default judgment. *Falk v. Allen*, 739 F.2d 461, 462 (9th Cir. 1984).

Here, Trustee is unable to collect the money earned by the Debtor without declaratory relief. As a result the Trustee is unable to take possession of the money and administer the estate.

Trustee has successfully petitioned the Court to deposit the checks into the Court's Registry. Trustee has not been able to recover the money earned from collecting the Receivables and will not be able to recover until the Court orders release of the funds to the appropriate parties. Therefore, the possibility of prejudice to the Plaintiff is high and warrants default judgment.

2. Merits of plaintiff's substantive claims and sufficiency of complaint

The general rule is that after default is entered, the factual allegations asserted in the complaint are taken as true, with the exception of facts regarding damages. *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977). A pleading must contain a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2).

"Under the second and third Eitel factors the Court must examine whether the Plaintiff has plead facts sufficient to establish and succeed upon its claims." *Craigslis, Inc. v. Naturemarket, Inc.*, 694 F. Supp. 2d 1039, 1055 (N.D. Cal. 2010).

A. *Declaratory Relief*

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A court "may declare the rights and other legal relations of any interested party seeking such declaration" when there is a case of actual controversy regarding a matter within its jurisdiction. 28 U.S.C. § 2201. Declaratory relief was created to protect defendants from adversarial threats of impending litigation by giving parties an opportunity to prevent potential damages. *Societe de Conditionnement en Aluminium v. Hunter Eng'g Co., Inc.*, 655 F.2d 938, 943 (9th Cir. 1981)(citing *Japan Gas Lighter Assoc. v. Ronson Corp.*, 257 F. Supp. 219, 237 (D.N.J 1966)).

An actual controversy exists if "the facts alleged, under all the circumstances; show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941). Once the court has determined whether there is an actual controversy, the court must decide whether to exercise jurisdiction and grant declaratory relief. *Principal Life Ins. Co. v. Robinson*, 394 F.3d 665, 668 (9th Cir. 2005).

Declaratory relief is appropriate if the judgment would "serve a useful purpose in clarifying and settling the legal relation in issue" and "terminate and afford relief from the uncertainty, insecurity and controversy giving rise to the proceeding." *Eureka Fed. Sav. & Loan Ass'n v. Am. Cas. Co.*, 873 F.2d 229, 231 (9th Cir. 1989). Furthermore, the court should avoid needless determination of state law, discourage forum shopping, and avoid duplicate litigation. *Gov't Emp. Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 (9th Cir. 1988).

Here, there is an existing controversy regarding the amount to be disbursed to each party from the Receivables collected by the Trustee/Debtor. A claim may present sufficient immediacy and reality when adjudicating an issue would end the lawsuit and would make the money be paid in the present. *Golden* at 1088-1089. In *Principal Life*, the Court found sufficient immediacy and reality was present when a party suffered an inability to make reasonable business decisions due to an unresolved lease agreement dispute. *Principal Life Ins. Co.* at 669.

Trustee's inability to dispose of the money earned, currently deposited in the Court Registry appears to satisfy the "sufficient immediacy and reality" needed to order declaratory relief. Trustee is presently unable to disburse to itself or to Defendant the portions of Receivables due under the Written Agreement. Similar to the plaintiff in *Principal Life* who could not make reasonable business decisions as a result of the dispute over the terms of the lease agreement, Trustee is unable to go on with daily business transactions due to the questions regarding the agreement.

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Furthermore, under 11 U.S.C. § 704 (a)(1), it is the Trustee's duty to "close the estate as expeditiously as is compatible with the best interests of parties in interest." At this point the Trustee is unable to take possession of money which Debtor has earned and distribute the money among the parties in interest. Adjudicating this claim would allow for the money currently sitting in the Court Registry to be disbursed to the Trustee and subsequently to Debtor's creditors.

The Court finds that an actual controversy does exist and that it should exercise its discretion to enter default judgment under the facts presently before the Court.

3. Sum of money at stake in action

Under this factor, "the court must consider the amount of money at stake in relation to the seriousness of Defendant's conduct." *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F.Supp.2d 1172, 1176 (C.D. Cal. 2002). When plaintiff only seeks damages proportional to the breach of the contract, the amount of money at stake does not preclude default judgment. *NewGen, LLC v. SafeCig, LLC*, 840 F.3d 606, 617 (9th Cir. 2016). "Default judgment is disfavored where the sum of money at stake is too large or unreasonable in relation to defendants conduct." *Vogel v. Rite Aid Corp.*, 992 F.Supp.2d 998, 1012 (C.D. Cal. 2014)(citing *Truong Giang Corp. v Twinstar Tea Corp.*, No. C 06-03594 JSW, 2007 WL 1545173, *12 (N.D. Cal. 2007).

Here, although the Plaintiff is seeking declaratory relief there is still money at stake. The Court's declaration could result in a monetary award to the Debtor's estate of \$330. The proportionately minimal sum of money at stake weighs in favor of entry of default judgment.

4. Possibility of dispute concerning material facts

The general rule is that after default is entered, all well-pleaded factual allegations are taken as true, with the exception of facts regarding damages. *PepsiCo, Inc.* at 1177.

Defendant was properly served and had a full opportunity to respond to the factual allegations asserted in the Complaint. Thus, default judgment is appropriate.

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5. Whether defendants' default was product of excusable neglect

When a party is properly served and ignores the deadline to respond to the complaint there is no excusable neglect. *NewGen, LLC v. SafeCig LLC*, 840 F.3d 606, 616 (9th Cir. 2016).

Here, Defendant was properly served with the Complaint on September 30, 2016. Defendant was served with the Motion for Default Judgment on May 25, 2017. Defendant has had ample opportunity to be heard and has yet to make an appearance in the present case. Therefore, Defendant's default is unlikely to be a result of excusable neglect.

6. Strong public policy favoring decisions on the merits

Generally default judgments are disfavored and a case should be decided on the merits. *Eitel*, 728 F.2d at 1472. When the Defendant makes the termination of a case impossible or impracticable, default judgment is permitted. *PepsiCo, Inc.* at 1174.

Here, Defendant was properly served and has not made any appearance in the case. Defendant's failure to make an appearance and failure to file any response or opposition weighs in favor of the entry of default judgment.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT Trustee's Motion for Default Judgment as requested in the Motion.

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Justin Paquette

Pro Se

Javier Torres

Pro Se

One Stop Multi-Specialty Medical

Pro Se

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Nor Cal Pain Management Medical Pro Se

Paramount Family Health Center Pro Se

Myelin Diagnostics Pro Se

Sylvia De La Llana Pro Se

Shoreline Medical Group, Inc. Pro Se

Sunkist Imaging Medical Center Pro Se

Movant(s):

David M. Goodrich

Represented By
Victor A Sahn
Jason Balitzer

Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

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6:16-14273 Allied Injury Management, Inc.

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Adv#: 6:16-01238 Allied Injury Management, Inc. v. De La Llana et al

#45.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01238. Complaint by Allied Injury Management, Inc. against Sylvia De La Llana, Myelin Diagnostics, Sunkist Imaging Medical Center, Shoreline Medical Group, Inc., Paramount Family Health Center, Javier Torres, Justin Paquette, Nor Cal Pain Management Medical Group, Inc., One Stop Multi-Specialty Medical Group & Therapy, Inc.. (Charge To Estate). Complaint for Interpleader and Declaratory Relief Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy

From: 11/15/16, 12/6/16, 12/20/16, 2/28/17, 4/25/17, 6/27/17

Also #40 - #44

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Justin Paquette

Pro Se

Javier Torres

Pro Se

One Stop Multi-Specialty Medical

Pro Se

Nor Cal Pain Management Medical

Pro Se

Paramount Family Health Center

Pro Se

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CONT... Allied Injury Management, Inc.

Chapter 11

Myelin Diagnostics Pro Se

Sylvia De La Llana Pro Se

Shoreline Medical Group, Inc. Pro Se

Sunkist Imaging Medical Center Pro Se

Plaintiff(s):

Allied Injury Management, Inc. Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR) Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

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6:17-13900 Brenda Gonzalez

Chapter 7

#1.00 Pro se Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, N.A. re 2009 Honda Civic

EH__

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brenda Gonzalez

Represented By
Patricia A Mireles

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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10:00 AM

6:17-13307 Linda E Long

Chapter 7

#2.00 Pro se Reaffirmation Agreement Between Debtor and BALBOA THRIFT & LOAN re 2012 Nissan Versa SV Sedan

EH__

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Linda E Long

Pro Se

Trustee(s):

John P Pringle (TR)

Pro Se

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10:00 AM

6:17-12680 Santino J Carbone

Chapter 7

#3.00 Pro se Reaffirmation Agreement Between Debtor and OneMain Financial Services re 00 Yamaha XVS

EH__

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Santino J Carbone

Represented By
Daniel King

Trustee(s):

Steven M Speier (TR)

Pro Se

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6:17-12203 William E Simpson, Jr

Chapter 7

#4.00 Pro se Reaffirmation Agreement Between Debtor and Wells Fargo Dealer Services re 2005 Chevrolet Truck Silverado 2500 HD-V

EH__

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William E Simpson Jr

Pro Se

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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Wednesday, July 12, 2017

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10:00 AM

6:17-12148 ANTOINETTE M BUENO

Chapter 7

#5.00 Pro se Reaffirmation Agreement Between Debtor and SchoolsFirst FCU re 2012 Honda Civic

EH__

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ANTOINETTE M BUENO

Represented By
Lisa F Collins-Williams

Trustee(s):

Charles W Daff (TR)

Pro Se

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11:00 AM

6:17-11761 Jason Lee Fraser

Chapter 7

#6.00 Pro se Reaffirmation Agreement Between Debtor and Snap-on Credit, LLC re
Tools of Trade

EH__

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jason Lee Fraser

Pro Se

Trustee(s):

Charles W Daff (TR)

Pro Se

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6:16-19150 Charles David Arthur and Claire Bigornia Blanza Arthur Chapter 7

#7.00 CONT Chapter 7 Trustee's Motion for Order: (1) Authorizing the Short Sale of Real Property of the Estate Free and Clear of Liens Pursuant to Bankruptcy Code §§ 363(b) and (f); (2) Approving Payment of Real Estate Commission; & (3) Granting Related Relief

From: 5/17/17, 5/31/17

EH__

Docket 39

Tentative Ruling:

05/31/2017

BACKGROUND

On October 16, 2016 ("Petition Date"), Charles David Arthur and Claire Blanza Arthur (collectively, "Debtors") filed their petition for chapter 7 relief. Charles Daff is the duly appointed chapter 7 trustee ("Trustee"). Among the assets of the Debtors' bankruptcy estate ("Estate") is real property located at 35965 Carlton Road in Wildomar, CA (the "Property").

On April 25, 2017, the Trustee filed a Motion seeking (1) authority for a short sale of the Estate's right, title, and interest in the Property free and clear of the interests; (2) approving payment of broker commission; and (3) granting related relief ("Motion").

No opposition has been filed.

DISCUSSION

I. Sale of Estate Property Pursuant to Section 363(b)

The trustee, after notice and a hearing, may sell property of the estate. 11

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CONT... Charles David Arthur and Claire Bigornia Blanza Arthur Chapter 7

U.S.C. § 363(b)(1); *see also Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). The sale must be in the best interests of the estate and the price must be fair and reasonable. *In re Canyon Partnership*, 55 B.R. 520 (Bankr. S.D. Cal. 1985); *see also In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991)(sale must have fair/reasonable price, accurate/reasonable notice to creditors and sale made in good faith). The trustee must articulate some "business justification" for selling estate property out of the "ordinary course of business" before the court may approve the transaction. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Ernst Home Ctr., Inc.*, 209 B.R. 974, 979 (Bankr. W.D. Wash. 1997). Objections to sale that are based on inadequacy of price are often resolved the court ordering an auction, which may occur in open court. *Simantrob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 287 (9th Cir. BAP 2005) *citing* Fed. R. Bankr. P. 6004(f).¹

Here, the Trustee asserts that the short sale will result in the estate being paid a fee of approximately \$21,750. The declarations of Karina Jimenez and Anthony Silva (the "Buyers") indicate that the estate will be paid a fee of \$21,750, in addition to the purchase price of \$350,000. However, the Motion is not clear as to what underlies the "fee" being paid. Instead, it appears that the "fee" is actually a part of the purchase price. The framework proposed by the Trustee appears to indicate bad faith because he provides no basis rooted in bankruptcy for the Estate to charge a fee in exchange for the sale of an asset of the Estate.

a) Sale Free and Clear of non-Debtor Interests

A trustee may sell estate property "free and clear" of third party interests in the property, such as co-ownership interest, liens, claims and encumbrances. *See* 11 U.S.C. § 363(f). A sale free and clear of third party interests pursuant to section 363 is authorized only if one of the following conditions is met: (1) sale authorized by applicable nonbankruptcy law; (2) third party whose interest will be affected consents; (3) the affected interest is a lien and the sale price is greater than total value of all liens on the property; (4) the affected interest is a bona fide dispute; or (5) the third party whose interest will be affected could be compelled to accept a money satisfaction of the interest. 11 U.S.C. § 363(f)(1)-(5).

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CONT... Charles David Arthur and Claire Bigornia Blanza Arthur

Chapter 7

The Trustee has not obtained consent from the first priority secured lender. Without such consent, the Court cannot grant the Motion free and clear of this lien. As to the remaining junior liens, the Trustee proposes that a hypothetical foreclosure sale situation satisfies Section 363(f)(5). However, the Court believes that the analysis provided in *Dishi & Sons v. Bay Condos LLC*, 510 B.R. 696, 711 (S.D.N.Y. 2014) provides the better view of whether a hypothetical foreclosure sale can be a basis for granting free and clear under 363(f)(5).

[A] narrow interpretation [of 363(f)(5)] provides a limited role for paragraph (5), but avoids rendering the remaining paragraphs mere surplusage. See *In re PW*, 391 B.R. 25, 44 (9th Cir. BAP 2008) ("[A]ny interpretation of paragraph (5) must satisfy the requirement that the various paragraphs of subsection (f) work harmoniously and with little overlap."). Other courts have therefore limited the scope of paragraph (5) to those scenarios where the trustee or debtor, not any third party, is the actor. See, e.g., *In re Ricco, Inc.*, 2014 WL 1329292, *3 (Bankr.N.D.W.Va. Apr. 1, 2014) ("[T]he only logical interpretation of ... § 363(f)(5) is that the statute requires that the trustee or debtor be the party able to compel monetary satisfaction for the interest which is the subject of the sale.") (quoting *In re Haskell*, 321 B.R. at 9); *In re Scott*, 2013 WL 4498987, *2–3 (Bankr.E.D.Ky. Aug. 21, 2013) (paragraph (5) does not refer to foreclosure proceedings because they are initiated by creditors, not the debtor); *In re Haskell*, 321 B.R. at 9 (paragraph (5) does not encompass eminent domain proceedings because the trustee must be the party capable of compelling the interest holder to accept a money satisfaction). **This Court agrees that paragraph (5) should be read to reach only those legal or equitable proceedings that could be brought by the trustee as owner of the property. A foreclosure by a third-party mortgagee is not such a proceeding.** And as Dishi has not suggested any other hypothetical proceedings by which the trustee could compel TGM to accept a money satisfaction in exchange for extinguishment of its interest, the Court holds that paragraph (5) does not authorize a sale free and clear of TGM's rights. *In re Daufuskie Island Props., LLC*, 431 B.R. 626, 637 (Bankr.D.S.C.2010)

**United States Bankruptcy Court
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Judge Mark Houle, Presiding
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Wednesday, July 12, 2017

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11:00 AM

CONT... **Charles David Arthur and Claire Bigornia Blanza Arthur** Chapter 7
(noting that the burden is on the proponent of the sale to identify the basis for the sale).

Dishi & Sons at 711 (S.D.N.Y. 2014)(emphasis added).

Here, the Court is inclined to agree with the rationale of *Dishi & Sons* that 363 (f)(5) should be read narrowly to encompass only legal or equitable proceedings that could be brought by the trustee as the owner of the property. For this reason, the Court is inclined to deny the Trustee's request to permit a sale free and clear of the junior liens against the Property.

TENTATIVE RULING

Based on the foregoing analysis, the Court is inclined to DENY the Motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Charles David Arthur

Represented By
Anerio V Altman

Joint Debtor(s):

Claire Bigornia Blanza Arthur

Represented By
Anerio V Altman

Movant(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Rika Kido

Trustee(s):

Charles W Daff (TR)

Represented By

**United States Bankruptcy Court
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CONT...

Charles David Arthur and Claire Bigornia Blanza Arthur
Lynda T Bui
Rika Kido

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, July 12, 2017

Hearing Room 303

11:00 AM

6:16-18363 Marlyne F Youssef

Chapter 7

#8.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 27

Tentative Ruling:

07/12/2017

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the following administrative claims will be allowed:

FEES \$936.31

EXPENSES \$79.63

The application for compensation is approved and the trustee may submit on the tentative.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Marlyne F Youssef

Represented By
Hani S Bushra

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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CONT... Marlyne F Youssef

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, July 12, 2017

Hearing Room 303

11:00 AM

6:16-17280 Jesus Ramirez Guillen and Yovana Mondagron Guillen

Chapter 7

#9.00 CONT Motion Of U.S. Trustee For An Order Disgorging Fees, Assessing Damages, And Imposing Fines And Against Bankruptcy Petition Preparer Hugo Laguna Pursuant To 11 U.S.C. § 110
HOLDING DATE

From: 1/4/17, 4/5/17

EH__

Docket 23

***** VACATED *** REASON: ORDER APPROVING STIPULATION
ENTERED 4/19/17**

Tentative Ruling:

04/05/17

The US Trustee has indicated that a deposition of the alleged BPP, Laguna, is currently scheduled for April 19, 2017. Based on the ongoing settlement negotiations between the UST and Laguna, as well as the ongoing discovery efforts, the UST has requested a continuance of the hearing for 120 days for an evidentiary hearing. Absent objection by Laguna at the hearing, the Court is inclined to approve the UST's proposed briefing schedule and set an evidentiary hearing on July 10, 2017, at 11:00 a.m.

APPEARANCES REQUIRED. Telephonic appearance by the UST is approved.

Party Information

Debtor(s):

Jesus Ramirez Guillen Pro Se

Joint Debtor(s):

Yovana Mondagron Guillen Pro Se

Movant(s):

United States Trustee (RS) Represented By
Mohammad Tehrani

**United States Bankruptcy Court
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Riverside
Judge Mark Houle, Presiding
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Wednesday, July 12, 2017

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11:00 AM

CONT... Jesus Ramirez Guillen and Yovana Mondagron Guillen

Chapter 7

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, July 12, 2017

Hearing Room 303

11:00 AM

6:15-20858 Armando G Ybarra, Jr. and Melissa K Ybarra

Chapter 7

#10.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 20

Tentative Ruling:

07/12/2017

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the following administrative claims will be allowed:

FEES \$611.28

EXPENSES \$73.90

The application for compensation is approved and the trustee may submit on the tentative.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Armando G Ybarra Jr.

Represented By
Michael Smith

Joint Debtor(s):

Melissa K Ybarra

Represented By
Michael Smith

**United States Bankruptcy Court
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11:00 AM

CONT... Armando G Ybarra, Jr. and Melissa K Ybarra

Chapter 7

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, July 12, 2017

Hearing Room 303

11:00 AM

6:15-20280 Kai Lin Wu

Chapter 7

#11.00 CONT OSC why Frank Osekowsky and Frank's Paralegal Services should not be held in contempt of court pursuant to 11 U.S.C. §105 and Federal Rule of Bankruptcy Procedure 9020

From: 6/21/17

EH__

Docket 72

Tentative Ruling:

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Kai Lin Wu

Represented By
Paul Y Lee

Trustee(s):

John P Pringle (TR)

Represented By
Wesley H Avery

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Wednesday, July 12, 2017

Hearing Room 303

11:00 AM

6:13-21586 Mehra N. Newby

Chapter 7

#12.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 52

Tentative Ruling:

07/12/2017

No opposition has been filed.

Service was Proper.

The applications for compensation of the Trustee and the Trustee's professionals have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the Applications of the associated professionals, the following administrative claims will be allowed:

Trustee's Request

Fees Requested \$1,500

Expenses Requested (tab summary of expenses) \$28.43

Attorney Request

Fees Requested \$9,550

Expenses Requested (tab summary of expenses) \$669.07

Attorney Request (Special Counsel)

Fees Requested \$5,056.27

Expenses Requested (tab summary of expenses) \$226

Accountant Request

**United States Bankruptcy Court
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11:00 AM

CONT... Mehra N. Newby

Chapter 7

Fees Requested \$1,510.65

Expenses Requested (tab summary of expenses) \$81.54

The applications for compensation and other administrative claims set forth in the Trustee's Final Report are approved and the trustee and associated professionals may submit on the tentative.

APPERANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Mehra N. Newby

Represented By
Joseph M Tosti

Trustee(s):

Larry D Simons (TR)

Represented By
Toan B Chung
James K Sweeney

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, July 12, 2017

Hearing Room 303

11:00 AM

6:13-26277 Charles Frederick Biehl

Chapter 7

#13.00 Order to Show Cause re: Civil Contempt

EH__

Docket 200

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Frederick Biehl

Represented By
Daryl L Binkley - DISBARRED -
Steven L Bryson

Trustee(s):

John P Pringle (TR)

Represented By
James C Bastian Jr
Elyza P Eshaghi
Brandon J Iskander

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, July 12, 2017

Hearing Room 303

11:00 AM

6:10-13285 Laureen Martha Harley

Chapter 7

#14.00 CONT Motion objecting to debtor's claimed exemption in funds pursuant to California Code Of Civil Procedure Section 583.140

From: 4/26/17, 5/10/17, 6/7/17

Also #15

EH__

Docket 35

***** VACATED *** REASON: CONTINUED TO 9/13/17 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laureen Martha Harley

Represented By

James M Powell - DISBARRED -
Michael H Raichelson

Trustee(s):

Steven M Speier (TR)

Represented By

Robert P Goe

**United States Bankruptcy Court
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Riverside
Judge Mark Houle, Presiding
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Wednesday, July 12, 2017

Hearing Room 303

11:00 AM

6:10-13285 Laureen Martha Harley

Chapter 7

#15.00 CONT Motion Authorizing Compromise of Controversy Related to Mesh Claims Pursuant to Federal Rules of Bankruptcy Rule 9019

From: 6/7/17

Also #14

EH__

Docket 29

***** VACATED *** REASON: ORDER ENTERED 7/10/17 -
WITHDRAWN**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laureen Martha Harley

Represented By

James M Powell - DISBARRED -
Michael H Raichelson

Movant(s):

Steven M Speier (TR)

Represented By

Robert P Goe

Trustee(s):

Steven M Speier (TR)

Represented By

Robert P Goe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, July 12, 2017

Hearing Room 303

11:00 AM

6:13-30133 Nabeel Slaieh

Chapter 7

#16.00 Motion for determination of whether stay in favor of debtor terminated pursuant to 11 U.S.C. §362(c)(2)(C) upon entry of judgment denying discharge

EH__

Docket 465

Tentative Ruling:

07/12/2017

BACKGROUND

On December 18, 2013, Nabeel Slaieh ("Debtor" or "Defendant") filed for chapter 7 relief. Larry D. Simons is the duly appointed chapter 7 trustee ("Trustee").

Among the assets of the bankruptcy estate is certain real property located at 40834 Baccarat Rd., Temecula, CA ("Property").

On August 29, 2014, the Office of the United States Trustee ("UST") filed a Complaint Objecting to Discharge or, Alternatively, Seeking Dismissal of the Case for Abuse ("Complaint"). An Answer was filed on October 21, 2014. On July 10, 2016, the UST sought Court authority to file a supplemental Complaint and extend the discovery and dispositive motion deadline. On September 10, 2015, the Court entered its order authorizing the filing of the Supplemental Complaint. The Supplemental Complaint was filed on September 16, 2015. The Supplemental Complaint added the Sixth and Seventh Claims for Relief under §§ 727(a)(2) and (d)(1). On June 28, 2016, the Court Granted the Defendant's Motion to Dismiss the Seventh Claim under § 727 (d)(1).

On July 8, 2016, the UST filed a Motion for Final Order to Enter Partial Summary Judgement or in the Alternative, Summary Adjudication of Material Facts as to the Sixth Claim for Relief. On October 21, 2016, the Court entered its order granting the UST's Motion for a Final Order and on October 25, 2016, entered final judgment on the Sixth Claim for Relief (the "Judgment"), denying the Debtor his discharge. The Debtor did not seek reconsideration and did not timely appeal the Court's Judgment.

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

Hearing Room 303

11:00 AM

CONT... Nabeel Slaieh

Chapter 7

On January 27, 2017, the UST filed a Motion to Dismiss Unresolved Claims Without Prejudice (the "Request to Dismiss Remaining Claims"). In its Request to Dismiss Remaining Claims, the UST indicated that the Debtor disputed whether the Court's Judgment was final because it did not address all of the claims raised by the Complaint and, relatedly, whether the time for Debtor to appeal the denial of discharge had lapsed. On March 22, 2017, the Court granted the UST's Request to Dismiss Remaining Claims. The Debtor then filed his Notice of Appeal of the Court's Judgment on April 1, 2017. The Debtor did not request a stay pending appeal.

On June 19, 2017, CFFC, Inc. and Brian Ostler, Sr., Esq. ("Movant") filed a motion for determination of whether stay in favor of the Debtor terminated pursuant to 11 U.S.C. § 362(c)(2)(C), upon entry of judgment denying discharge ("Motion"). The Motion indicates that Debtor's counsel and the Debtor were served by US Mail on June 14, 2017. Based on the proof of service, in addition to the correspondence between Mr. Saba and Movant, the Court finds that Debtor had sufficient due process. Despite having been served with the Motion, no opposition has been filed by the Debtor.

DISCUSSION

Movant indicates that he filed an action in Pomona Superior Court against the Debtor for fraudulent transfer, conspiracy to fraudulently transfer and recovery for violation of Business and Professions Code § 17200 et seq. (the "State Court Action") on November 30, 2016. The State Court Action was served on the Debtor on January 3, 2017, and a default was entered against the Debtor on February 21, 2017.

On June 5, 2017, the Movant received correspondence from Debtor's counsel demanding that the default in the State Court Action be set aside, and asserting that failure to do so would result in the Debtor filing an adversary action seeking damages for violation of the automatic stay. (Exhibit 3).

Movant further asserts and provides copies of email correspondences indicating that Debtor's counsel argued to Movant prior to the filing of the instant Motion that the Judgment denying the Debtor his discharge had been appealed and was "without any force and/or effect." (Exhibit 5).

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Wednesday, July 12, 2017

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11:00 AM

CONT... Nabeel Slaieh

Chapter 7

Movant requests that this Court confirm that the steps already taken in the State Court Action have not and will not violate the stay and that there is no stay in effect.

The automatic stay of acts against debtor *in personam* expires when the debtor is granted or denied a discharge. 11 U.S.C. § 362(c)(2)(C). Acts against property of the estate remain stayed until the earliest of the time when the bankruptcy case is closed, dismissed, or the property ceases to be property of the estate. 11 U.S.C. § 362(c).

Here, the Movant is correct that the Court denied the Debtor his discharge pursuant to the October 25, 2016, Judgment. Thus, the Court finds that the automatic stay of acts against the Debtor, *in personam*, expired on the date the Judgment was entered.

In contrast, acts against property of the estate remain stayed. However, the State Court Action appears to clearly state that "it does not seek to obtain possession of property of the Bankruptcy Estate or of property from the Bankruptcy Estate or to exercise control over property of the Bankruptcy Estate, or to create, perfect, or enforce any lien against property of the Bankruptcy Estate." (Ex. 2 at 2, ¶3).

TENTATIVE RULING

As set forth above, the Court finds that pursuant to § 362(c)(2)(C), the automatic stay terminated as to Movant (as to non-estate property) as of October 25, 2016. As such, the actions initiated by the Movant against the Debtor as of November 2016 with respect to the State Court Action do not violate the automatic stay, and shall not violate the automatic stay as long as Movant makes no attempt to obtain possession/control of estate property.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Nabeel Slaieh

Represented By

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Wednesday, July 12, 2017

Hearing Room 303

11:00 AM

CONT... Nabeel Slaieh

Chapter 7

George A Saba

Movant(s):

CFFC, Inc

Represented By
Brian C Ostler Sr

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

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

Hearing Room 303

2:00 PM

6:16-20927 Mee Soon Kim

Chapter 7

Adv#: 6:17-01064 Jabro v. Kim et al

#17.00 CONT Status Conference Re: Complaint by Hikmat Jabro against Mee Soon Kim, Tae Young Kim . (14 (Recovery of money/property - other))

From: 5/17/17, 6/7/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/2/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mee Soon Kim

Represented By
Minh Duy Nguyen

Defendant(s):

Tae Young Kim

Pro Se

Mee Soon Kim

Pro Se

Plaintiff(s):

Hikmat Jabro

Represented By
Michael H Jabro

Trustee(s):

Larry D Simons (TR)

Represented By
David Seror
Michael W Davis

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Wednesday, July 12, 2017

Hearing Room 303

2:00 PM

6:16-20927 Mee Soon Kim

Chapter 7

Adv#: 6:17-01012 Simons v. Kim

#18.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01012. Complaint by Larry Simons against Tae Young Kim. Complaint for (1) Declaratory Relief, (2) To Quiet Title, And (3) Avoidance and Recovery of Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(A) and (B), 550(a)(1) and (2); and, California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(91 (Declaratory judgment)

FROM: 3/29/17, 5/3/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mee Soon Kim

Represented By
Minh Duy Nguyen

Defendant(s):

Tae Young Kim

Pro Se

Plaintiff(s):

Larry Simons

Represented By
Michael W Davis

Trustee(s):

Larry D Simons (TR)

Represented By
David Seror
Michael W Davis

**United States Bankruptcy Court
Central District of California
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Wednesday, July 12, 2017

Hearing Room 303

2:00 PM

6:16-13091 Luz Ampelia Castro

Chapter 7

Adv#: 6:17-01003 Cisneros v. Castro, Jr.

#19.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01003. Complaint by Arturo M. Cisneros against Enrique Castro Jr.. (Charge To Estate). (Attachments: # 1 Adversary Coversheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer))

SETTLED

From: 3/8/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 10/25/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luz Ampelia Castro

Represented By
George P Hobson Jr

Defendant(s):

Enrique Castro Jr.

Represented By
C Scott Rudibaugh

Plaintiff(s):

Arturo M. Cisneros

Represented By
Carmela Pagay
Todd A Frealy

Trustee(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, July 12, 2017

Hearing Room 303

2:00 PM

6:15-19998 Jack C Pryor

Chapter 7

Adv#: 6:17-01050 United States Trustee for the Central District of v. Pryor

#20.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01050. Complaint by United States Trustee for the Central District of California, Region 16 against Jack C Pryor. (Fee Not Required). with adversary cover sheet Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e)))

From: 5/3/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jack C Pryor

Represented By
Trent Thompson

Defendant(s):

Jack C Pryor

Represented By
Linda J DeVore

Plaintiff(s):

United States Trustee for the Central

Represented By
Everett L Green

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Brandon J Iskander

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, July 12, 2017

Hearing Room 303

2:00 PM

6:15-14230 Home Security Stores, Inc.

Chapter 7

Adv#: 6:17-01085 PRINGLE v. Winn et al

#21.00 Status Conference RE: [1] Adversary case 6:17-ap-01085. Complaint by JOHN P PRINGLE against Ralph Winn. (Charge To Estate - \$350.00). and other Defendants including DOES 1-25 Nature of Suit: 12 - Recovery of money/property - 547 preference, 13-Recovery of money/property - 548 fraudulent transfer, 21-Validity, priority or extent of lien or other interest in property, 14 - Recovery of money/property - other, 91- Declaratory judgment)

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/23/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Home Security Stores, Inc.

Represented By
Winfield S Payne III

Defendant(s):

Steven B Knoch

Represented By
Seth W Wiener

Stacy Winn

Pro Se

Natalia V Knoch

Represented By
Seth W Wiener

Ralph Winn

Pro Se

Sterling Security Service, Inc.

Represented By
Seth W Wiener

Plaintiff(s):

JOHN P PRINGLE

Represented By

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Wednesday, July 12, 2017

Hearing Room 303

2:00 PM

CONT... Home Security Stores, Inc.

Chapter 7

Charity J Miller

Trustee(s):

John P Pringle (TR)

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Wednesday, July 12, 2017

Hearing Room 303

2:00 PM

6:13-22710 Jesus M. Tapia

Chapter 7

Adv#: 6:16-01265 Whitmore (TR) v. Davol, Inc. et al

#22.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01265. Complaint by Jesus Tapia against Davol, Inc., Bard Devices, Inc., C.R. Bard, Inc..
(Holding date)

From: 1/4/17, 2/1/17, 3/1/17, 4/12/17, 6/7/17, 6/21/17

EH__

Docket 1

***** VACATED *** REASON: CASE DISMISSED ORDER ENTERED
7/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus M. Tapia

Represented By
Michael Smith

Defendant(s):

C.R. Bard, Inc.

Represented By
Christopher O Rivas

Bard Devices, Inc.

Represented By
Christopher O Rivas

Davol, Inc.

Represented By
Christopher O Rivas

Plaintiff(s):

Robert Whitmore (TR)

Represented By
Troy A Brenes

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, July 12, 2017

Hearing Room 303

2:00 PM

CONT... Jesus M. Tapia

Chapter 7

Trustee(s):

Robert Whitmore (TR)

Represented By
Douglas A Plazak
Troy A Brenes

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, July 12, 2017

Hearing Room 303

2:00 PM

6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01163 Revere Financial Corporation v. Burns

**#23.00 CONT Motion to set aside RE: Default
HOLDING DATE**

From: 6/7/17

EH__

Docket 21

Tentative Ruling:

07/12/2017

At the prior hearing on the Defendant's motion to set aside default ("Motion"), the Court indicated it would grant the motion conditioned upon the Defendant paying Plaintiff's fees incurred for opposing the Motion and for preparation of the Motion for Default Judgment that would become moot as a result of the order setting aside the default, subject to any objection from Defendant as to the reasonableness of the fees.

The Court required that a declaration from Plaintiff re: fees would be due by June 28, 2017, and that any response/objection to the fees would be due by July 7, 2017. The Declaration re: Fees and Objection were timely filed.

The Court has reviewed the billing records provided by Plaintiff and finds several entries to be unreasonably high. Specifically,

1. The duplicative and excessive entries for research regarding elements, etc. of default judgments constitute two separate entries of approximately 7 hours each. The total for these two entries is thus approximately 14 hours regarding research for a default judgment motion on April 13 and April 14. The Court finds these research amounts unreasonably high. (\$1,762.50 + \$1,675 = \$3,437.50)
2. A related conference between the associate preparing the motion and the partner on the case, Mr. Franklin Fraley, for a total of nearly 5 hours on April 19 appears excessive. (\$1,237.50)

**United States Bankruptcy Court
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3. The April 21 revisions and conference with Mr. Fraley for a total of 5.2 hours inappropriately lumps amounts for distinct tasks together and warrants striking as well. (\$1,300)
4. The May 9 and 10 entries to review/analyze for preparation of the opposition to the Defendant's Motion are duplicative and should be stricken. (\$1,250 + \$1,125=\$2,375)
5. The May 24 entries that total 7.75 hours improperly lump tasks making it difficult to gauge the reasonableness of the fees. Overall the Court finds that the amount billed for the tasks set forth appear unreasonably high. This entry shall be stricken. (\$1,937.50)

Striking the above amounts, the Court finds that a reduction of \$10,287.50 is appropriate.

Based on the foregoing, the Court is inclined to find the remaining figure of \$8,673.75 to be a reasonable amount of fees for the actions taken by Plaintiff in opposing the Motion and in drafting the Motion for Default Judgment.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Don Cameron Burns

Represented By
Don C Burns

Movant(s):

Don Cameron Burns

Represented By
Don C Burns
Don C Burns

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Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat Chapter 7
Adv#: 6:15-01307 Cisneros v. OIC MEDICAL CORPORATION, a California corporation

#24.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01307. Complaint by A. Cisneros against OIC MEDICAL CORPORATION, a California corporation, LIBERTY ORTHOPEDIC CORPORATION, a California corporation, UNIVERSAL ORTHOPAEDIC GROUP, a California corporation. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers (with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 2/24/16, 4/13/16, 6/22/16, 8/24/16, 11/2/16, 2/1/17, 3/8/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 9/13/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

UNIVERSAL ORTHOPAEDIC

Represented By
Summer M Shaw
George Hanover

LIBERTY ORTHOPEDIC

Represented By
Summer M Shaw
George Hanover

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat Chapter 7

Adv#: 6:15-01309 Cisneros v. DOUGLAS J. ROGER, M.D., INC. DEFINED BENEFIT PLAN

#25.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01309. Complaint by A. Cisneros against DOUGLAS J. ROGER, M.D., INC. DEFINED BENEFIT PLAN. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential Transfer (with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other))

From: 12/30/15, 2/24/16, 4/13/16, 6/22/16, 8/24/16, 11/2/16, 2/1/17, 3/8/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 9/13/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

DOUGLAS J. ROGER, M.D., INC.

Represented By
Summer M Shaw

Plaintiff(s):

A. Cisneros

Represented By
D Edward Hays
Chad V Haes

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CONT... Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Trustee(s):

Arturo Cisneros (TR)

Represented By

Chad V Haes

D Edward Hays

Franklin R Fraley Jr

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6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#26.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01224. Complaint by Larry D. Simons (TR) against Nabeel Naiem Slaieh, Joanne Fraleigh. (Charge To Estate \$350.00). Complaint for Avoidance and Recovery of Unauthorized Post-Petition Transfer (Attachments: # 1 Part 2 of 2 # 2 Adversary Proceeding Cover Sheet) Nature of Suit: (14 (Recovery of money/property - other))

From: 11/2/16, 2/1/17, 2/15/17, 4/26/17, 5/17/17, 6/7/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

David A. Wood

Pro Se

Joanne Fraleigh

Represented By
George A Saba

Nabeel Naiem Slaieh

Represented By
George A Saba

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

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CONT... Nabeel Slaieh

Chapter 7

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

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6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#27.00 CONT Motion For Summary Judgment/Memorandum of Points and Authorities on the Preclusive Effect of Plaintiff's State Court Judgment

From: 6/7/17

Also #28

EH__

Docket 208

***** VACATED *** REASON: CONTINUED TO 8/2/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi
Ryan F Thomas

Movant(s):

Charles Edward Schrader

Pro Se

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#28.00 CONT Status Conference RE: Adversary case 6:13-ap-01171. Complaint by Charles Edward Schrader against Narinder Sangha . willful and malicious injury
HOLDING DATE

From: 7/8/15, 11/4/15, 3/2/16, 12/14/16, 12/13/17, 4/5/17, 6/7/17

Also #27

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/2/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi
Ryan F Thomas

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:14-23678 Liliana Gomez

Chapter 13

#1.00 Motion RE: Objection to Claim Number 1 by Claimant Castle Credit Co Holdings, LLC

Also #2

EH__

Docket 100

Tentative Ruling:

7/13/17

Background:

On November 6, 2014, Liliana Gomez ("Debtor") filed a Chapter 13 voluntary petition. On November 13, 2014, Castle Credit Corporation ("Creditor") filed a claim in the amount of \$6,461.71, of which \$3,000 was secured ("Claim 1"). On January 8, 2015, Debtor's Chapter 13 plan was confirmed. On April 10, 2017, Creditor amended Claim 1 to reduce the claim to \$3,461.71, eliminating the secured portion. On June 8, 2017, Debtor filed a claim objection.

The basis of Creditor's claim is the sale of a Puronics water treatment system. Debtor states that she returned the system after two months. Furthermore, Debtor states that she paid Creditor \$3,000 in settlement of the claim in February 2017. Finally, Debtor argues that Creditor has not provided sufficient evidence of its claim, because the contract underlying is in Spanish.

Applicable Law:

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CONT... **Liliana Gomez**

Chapter 13

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. See *In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. See *Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Section 14 of contract underlying Creditor's claim contains a choice of law provision

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CONT... Liliana Gomez

Chapter 13

identifying North Dakota law as the controlling law. Debtor has not raised an argument regarding the validity of this choice of law provision, and, therefore, the Court will apply North Dakota law. North Dakota's version of UCC Article 2-209, N.D. Cent. Code § 41-02-16(3), governing the modification to a contract for the sale of goods, states : "The requirements of the statute of frauds of this chapter must be satisfied if the contract as modified is within its provision." UCC Article 2-201, adopted by North Dakota, includes an exception to the status of frauds for part performance, recognized by North Dakota. *See Hofmann v. Stoller*, 320 N.W.2d 786, 790 (N.D. 1982).

The part performance exception to the statute of frauds requirement has been subjected to different interpretations in different contexts and states. *See, e.g.*, N.D. Cent. Code §9-09-06 (outside UCC, alteration of written contract by oral agreement requires that the agreement be "executed"); *see also* Cal. Com. Code § 2209, *California Code Comment* (describing California cases dealing with execution of oral agreements modifying written contracts within purview of UCC). Nevertheless, the Court need not reach the issue because Debtor has not satisfied its burden here. Debtor must demonstrate by a preponderance of the evidence that the alleged modification took place. *See Hofmann v. Stoller*, 320 N.W. 2d at 790. The only evidence provided by Debtor is hearsay – statements made to Debtor by her former attorney regarding conversations with Creditor. Furthermore, given the UCC fixture filing attached to Creditor's proof of claim, it is not clear to the Court that the \$3,000 payment to Creditor through escrow is more consistent with the alleged oral modification than with the existing contract.

Debtor's remaining arguments lack merit. Absent a contractual provision providing a right of rescission, Debtor's obligations under the contract were not extinguished by returning the water treatment system. Furthermore, the fact that the underlying contract is written in Spanish is irrelevant; Debtor could have filed a translated copy. Therefore, the Court declines to hold that the contract is invalid as evidence of Creditor's claim.

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CONT... Liliana Gomez

Chapter 13

Tentative Ruling

The Court is inclined to OVERRULE the objection.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Liliana Gomez

Represented By
Christopher J Langley

Movant(s):

Liliana Gomez

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:14-23678 Liliana Gomez

Chapter 13

#2.00 CONT Trustee's Motion to Dismiss Case

From: 6/1/17, 6/8/17

Also #1

EH__

Docket 92

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liliana Gomez

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-13637 Noel Mallari

Chapter 13

#3.00 CONT Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

From: 7/6/17

Also #4

EH__

Docket 29

***** VACATED *** REASON: ORDER ENTERED 7/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Noel Mallari

Represented By
David L Nelson

Movant(s):

Noel Mallari

Represented By
David L Nelson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-13637 Noel Mallari

Chapter 13

#4.00 CONT Trustee's Motion to Dismiss Case

From: 6/8/17, 7/6/17

Also #3

EH__

Docket 24

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Noel Mallari

Represented By
David L Nelson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-16909 Edward Edmund Zozaya and Georgia Parrilla Zozaya

Chapter 13

#5.00 Application for Compensation for Dana Travis, Debtor's Attorney, Fee: \$1135.00

EH__

Docket 87

Tentative Ruling:

Application: \$1135 for opposition to motion for relief from stay and adequate protection order.

Opposition: Fees are unreasonable and excessive. Trustee recommends \$525.

Analysis: 11 U.S.C. § 330(a)(3) (2005) provides factors to be considered in determining the reasonableness of requested compensation.

Wells Fargo Bank filed a motion for relief from stay (real property), seeking relief under § 362(d)(1) because Debtors were three months behind on their post-confirmation payments. Debtors filed a standard opposition, stating that they would cure or enter into an adequate protection agreement. The hearing was continued once, and then the parties entered into an adequate protection agreement.

Trustee's opposition does not identify any specific time entries which the Trustee believes are unreasonable or excessive. All of the entries are for fifteen minutes or less, except for one entry regarding the preparation of the opposition, which is listed at twenty-one minutes. There are multiple, somewhat generic time entries related to the motion for relief from stay and the adequate protection order, including for discussions with the client and opposing counsel. Those entries appear excessive given the simplicity of the relief from stay opposition and the adequate protection order, and given that the adequate protection order was prepared by Bank's counsel. As such, the Court will reduce the fees requested by \$200 as an approximation in this regard.

There is also one entry, for \$40, which appears to reflect time Applicant spent

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CONT... Edward Edmund Zozaya and Georgia Parrilla Zozaya Chapter 13

helping the client make their monthly mortgage payments (on 5/8/17). The Court will eliminate this entry, because it is unclear why Applicant needed to consult with their client about the mortgage payments, and it seems unreasonable to bill the client \$40.00 for transmitting the monthly mortgage payment.

Tentative:

The Court is inclined to APPROVE the application in a reduced amount of \$895.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Edward Edmund Zozaya

Represented By
Dana Travis

Joint Debtor(s):

Georgia Parrilla Zozaya

Represented By
Dana Travis

Movant(s):

Georgia Parrilla Zozaya

Represented By
Dana Travis

Edward Edmund Zozaya

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14868 Lawrence D Leavingston, Sr.

Chapter 13

#6.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lawrence D Leavingston Sr.

Represented By
Gilbert A Diaz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14693 Blanca Resendez

Chapter 13

#7.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 6/23/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blanca Resendez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14696 Jose Velasquez

Chapter 13

#8.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 6/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Velasquez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14697 Walter Lemus

Chapter 13

#9.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Walter Lemus

Represented By
Gary S Saunders

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14744 Cirenio Merida

Chapter 13

#10.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cirenio Merida

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14783 Silvia Alvarez

Chapter 13

#11.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 6/26/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Silvia Alvarez

Represented By
Filemon Kevin Samson III

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14790 Ernesto Ayon Lopez and Dolores Millan Sanchez

Chapter 13

#12.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ernesto Ayon Lopez

Represented By
James Geoffrey Beirne

Joint Debtor(s):

Dolores Millan Sanchez

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14798 Gail Katherine Stump

Chapter 13

#13.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gail Katherine Stump

Represented By
Michael E Clark

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14800 April E Diggs

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 6/29/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

April E Diggs

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14306 Jane R Mary Engel

Chapter 13

#15.00 Motion to vacate dismissal

CASE DISMISSED 5/26/17

EH__

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jane R Mary Engel

Represented By
Peter L Nisson

Movant(s):

Jane R Mary Engel

Represented By
Peter L Nisson
Peter L Nisson
Peter L Nisson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:13-13116 Juana Judith Mejia

Chapter 13

#16.00 Trustee's Motion to Dismiss Case

EH__

Docket 102

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juana Judith Mejia

Represented By
Javier H Castillo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:14-13573 Jaelyn R Young

Chapter 13

#17.00 Trustee's Motion to Dismiss Case

EH__

Docket 180

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaelyn R Young

Represented By
Michael Smith
Sundee M Teeple
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:15-18480 Sean A. Davis

Chapter 13

#18.00 Motion For Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 95

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sean A. Davis

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-15412 Pablo Flores

Chapter 13

#19.00 Trustee's Motion to Dismiss Case

EH__

Docket 37

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pablo Flores

Represented By
Anthony P Cara

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Courtroom 303 Calendar**

Thursday, July 13, 2017

Hearing Room 303

12:31 PM

6:16-18526 Ana M. Oliver

Chapter 13

#20.00 CONT Trustee's Motion to Dismiss Case

From: 6/22/17, 7/6/17

EH__

Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ana M. Oliver

Represented By
Michael Smith
Sundee M Teeple
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 13, 2017

Hearing Room 303

12:31 PM

6:17-10469 Joe Nathan Banks

Chapter 13

#21.00 CONT Motion for Order Dismissing Chpater 13 Proceeding (Delinquency)

From: 6/22/17

EH__

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joe Nathan Banks

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 13, 2017

Hearing Room 303

12:31 PM

6:17-10702 Miriam Louise Preisendanz

Chapter 13

#22.00 CONT Trustee's Motion to Dismiss Case

From: 7/6/17

EH__

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miriam Louise Preisendanz

Represented By
Danny K Agai

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 18, 2017

Hearing Room 303

2:00 PM

6:17-10724 Bausman and Company Incorporated

Chapter 11

#1.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 2/28/17, 4/11/17

EH__

Docket 6

***** VACATED *** REASON: CONTINUED TO 7/25/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Bausman and Company Incorporated

Represented By
William A Smelko

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, July 19, 2017

Hearing Room 303

2:00 PM

6:16-17389 William Mark Eddington

Chapter 7

Adv#: 6:17-01002 BOSNIAN WAND AIRLINES v. Eddington

#1.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01002. Complaint by BOSNIAN WAND AIRLINES against William Mark Eddington. (d),(e)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud))

From: 3/8/17, 3/22/17, 4/5/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 7/26/17 AT 2:00 P.M.**

Party Information

Debtor(s):

William Mark Eddington

Represented By
Jenny L Doling

Defendant(s):

William Mark Eddington

Represented By
Summer M Shaw

Plaintiff(s):

BOSNIAN WAND AIRLINES

Represented By
John T Van Geffen

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, July 19, 2017

Hearing Room 303

2:00 PM

6:16-21223 Kelly Arnold

Chapter 7

Adv#: 6:17-01019 Frealy v. Arnold et al

#2.00 CONT Status Conference RE: Complaint by Todd Frealy against Larry Arnold, Kelly Arnold. (Charge To Estate - \$350.00). Nature of Suit: 14 - Recovery of money/property - other, 11 - Recovery of money/property - 542 turnover of property

From: 4/5/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 7/26/17 AT 2:00 P.M.**

Party Information

Debtor(s):

Kelly Arnold

Represented By
Todd L Turoci

Defendant(s):

Larry Arnold

Pro Se

Kelly Arnold

Pro Se

Plaintiff(s):

Todd Frealy

Represented By
Carmela Pagay

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 20, 2017

Hearing Room 303

12:30 PM

6:11-45689 Emilio Aispuro and Luz Angelica Aispuro

Chapter 13

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

From: 2/9/17, 3/9/17, 5/11/17

EH__

Docket 63

***** VACATED *** REASON: CONTINUED TO 7/27/17 AT 12:30 P.M.**

Party Information

Debtor(s):

Emilio Aispuro

Represented By
Clifford Bordeaux

Joint Debtor(s):

Luz Angelica Aispuro

Represented By
Clifford Bordeaux

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 20, 2017

Hearing Room 303

12:30 PM

6:12-15987 James W Smith, Sr. and Cynthia Smith

Chapter 13

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

From: 5/11/17

Also #

EH _____

Docket 57

***** VACATED *** REASON: CONTINIUED TO 7/27/17 AT 12:30 PM**

Party Information

Debtor(s):

James W Smith Sr.

Represented By
Jenny L Doling

Joint Debtor(s):

Cynthia Smith

Represented By
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 20, 2017

Hearing Room 303

12:30 PM

6:12-15987 James W Smith, Sr. and Cynthia Smith

Chapter 13

#3.00 CONT Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

From: 5/11/17

Also #

EH__

Docket 62

***** VACATED *** REASON: CONTINUED TO 7/27/17 AT 12:30 PM**

Party Information

Debtor(s):

James W Smith Sr.

Represented By
Jenny L Doling

Joint Debtor(s):

Cynthia Smith

Represented By
Jenny L Doling

Movant(s):

James W Smith Sr.

Represented By
Jenny L Doling
Jenny L Doling

Cynthia Smith

Represented By
Jenny L Doling
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 20, 2017

Hearing Room 303

12:30 PM

6:12-15991 Gustavo C Madrigal and Magdaline E M Madrigal

Chapter 13

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

EH__

Docket 69

*** VACATED *** REASON: CONTINUED TO 7/27/17 AT 12:30 P.M.

Party Information

Debtor(s):

Gustavo C Madrigal

Represented By
Jenny L Doling

Joint Debtor(s):

Magdaline E M Madrigal

Represented By
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 20, 2017

Hearing Room 303

12:30 PM

6:12-23204 Donald Mark Prather

Chapter 13

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

EH__

Docket 104

*** VACATED *** REASON: CONTINUED TO 7/27/17 AT 12:30 P.M.

Party Information

Debtor(s):

Donald Mark Prather

Represented By
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 20, 2017

Hearing Room 303

12:30 PM

6:16-11794 ROBERT A HAGUE and DIANNE L HAGUE

Chapter 13

#6.00 Trustee's Motion to Dismiss Case

EH__

Docket 64

*** VACATED *** REASON: CONTINUED TO 7/27/17 AT 12:30 P.M.

Party Information

Debtor(s):

ROBERT A HAGUE

Represented By
Manfred Schroer

Joint Debtor(s):

DIANNE L HAGUE

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-10600 Ryan J Sperry

Chapter 13

#1.00 Trustee's Motion to Dismiss Case

EH__

Docket 61

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/22/17**

Party Information

Debtor(s):

Ryan J Sperry

Represented By
Samer A Nahas

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-11112 Rosa Alvarez

Chapter 13

#2.00 Trustee's Motion to Dismiss Case

EH__

Docket 69

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Rosa Alvarez

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-11372 Ernest B Galante and Susan D Galante

Chapter 13

#3.00 Trustee's Motion to Dismiss Case

EH__

Docket 136

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Ernest B Galante

Represented By

Dale Parham - INACTIVE -

Michael Smith

Sundee M Teeple

Joint Debtor(s):

Susan D Galante

Represented By

Dale Parham - INACTIVE -

Michael Smith

Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-11807 Claudia Veronica Reyes-Olivares

Chapter 13

#4.00 Trustee's Motion to Dismiss Case

EH__

Docket 144

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Claudia Veronica Reyes-Olivares

Represented By
Anthony E Contreras

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-12300 Araceli Canela

Chapter 13

#5.00 Trustee's Motion to Dismiss Case

EH__

Docket 55

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/12/17**

Party Information

Debtor(s):

Araceli Canela

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-12301 Dinah Green

Chapter 13

#6.00 Trustee's Motion to Dismiss Case

EH__

Docket 73

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17

Party Information

Debtor(s):

Dinah Green

Represented By
Tyson Takeuchi

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)
Rod (DS) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-13198 Clinton Jerome White and Dolores Estelle Green

Chapter 13

#7.00 Trustee's Motion to Dismiss Case

EH__

Docket 123

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Clinton Jerome White

Represented By
Michael E Clark
Barry E Borowitz

Joint Debtor(s):

Dolores Estelle Green

Represented By
Michael E Clark
Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-14375 Magdaleno Aguilar Martinez and Sara Aguilar Ruiz

Chapter 13

#8.00 Trustee's Motion to Dismiss Case

EH__

Docket 60

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/12/17**

Party Information

Debtor(s):

Magdaleno Aguilar Martinez

Represented By

Frank J Alvarado

Lauro Nick Pacheco Jr.

Joint Debtor(s):

Sara Aguilar Ruiz

Represented By

Frank J Alvarado

Lauro Nick Pacheco Jr.

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-15155 Luis Antonio Palomino and Mariella Roxana Palomino

Chapter 13

#9.00 Trustee's Motion to Dismiss Case

EH__

Docket 112

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Luis Antonio Palomino

Represented By
David Lozano

Joint Debtor(s):

Mariella Roxana Palomino

Represented By
David Lozano

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-15452 Robert Pasquale Voce and Kristine Raeanne Voce

Chapter 13

#10.00 Trustee's Motion to Dismiss Case

EH__

Docket 64

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Robert Pasquale Voce

Represented By
Michael E Clark
Barry E Borowitz

Joint Debtor(s):

Kristine Raeanne Voce

Represented By
Michael E Clark
Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 304 Calendar**

Monday, July 24, 2017

Hearing Room 304

1:00 PM

6:13-15780 Antonio Saavedra and Genoveva Saavedra

Chapter 13

#11.00 Trustee's Motion to Dismiss Case

EH__

Docket 124

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/12/17**

Party Information

Debtor(s):

Antonio Saavedra

Represented By
Rabin J Pournazarian

Joint Debtor(s):

Genoveva Saavedra

Represented By
Rabin J Pournazarian

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-15941 Adolfo Ayala

Chapter 13

#12.00 Trustee's Motion to Dismiss Case

EH__

Docket 51

Party Information

Debtor(s):

Adolfo Ayala

Represented By
Anthony Wilaras

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-16790 Kyle Patrick Quisenberry

Chapter 13

#13.00 Trustee's Motion to Dismiss Case

EH__

Docket 35

Party Information

Debtor(s):

Kyle Patrick Quisenberry Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-17149 Desmond Anthony Townsend and Lillian Carmen

Chapter 13

#14.00 Trustee's Motion to Dismiss Case

EH__

Docket 60

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Desmond Anthony Townsend

Represented By
April E Roberts

Joint Debtor(s):

Lillian Carmen Townsend

Represented By
April E Roberts

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-18206 Darrin Hammond and Sandra Hammond

Chapter 13

#15.00 Trustee's Motion to Dismiss Case

EH__

Docket 73

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Darrin Hammond

Represented By
Julie J Villalobos

Joint Debtor(s):

Sandra Hammond

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-18724 Wilbert F Anderson

Chapter 13

#16.00 Trustee's Motion to Dismiss Case

EH__

Docket 35

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/27/17**

Party Information

Debtor(s):

Wilbert F Anderson

Represented By
Hector C Perez

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-18728 Jeanette Johnson

Chapter 13

#17.00 Trustee's Motion to Dismiss Case

EH__

Docket 63

Party Information

Debtor(s):

Jeanette Johnson

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-19151 Jesus Garcia and Olivia Garcia

Chapter 13

#18.00 Trustee's Motion to Dismiss Case

EH__

Docket 60

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Jesus Garcia

Represented By
Luis G Torres

Joint Debtor(s):

Olivia Garcia

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-19597 James Randal Kenley and Kathern Elizabeth Kenley

Chapter 13

#19.00 Trustee's Motion to Dismiss Case

EH__

Docket 59

Party Information

Debtor(s):

James Randal Kenley

Represented By
Robert J Spitz

Joint Debtor(s):

Kathern Elizabeth Kenley

Represented By
Robert J Spitz

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-20147 John Joseph Vasquez

Chapter 13

#20.00 Trustee's Motion to Dismiss Case

EH__

Docket 43

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/15/17**

Party Information

Debtor(s):

John Joseph Vasquez

Represented By
Tyson Takeuchi

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-21046 Cecilia R Rodas

Chapter 13

#21.00 Trustee's Motion to Dismiss Case

EH__

Docket 110

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/26/17**

Party Information

Debtor(s):

Cecilia R Rodas

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-21366 Enrique Lopez Matias and Teresa Duarte Matias

Chapter 13

#22.00 Trustee's Motion to Dismiss Case

EH__

Docket 65

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Enrique Lopez Matias

Represented By
John F Brady
Lisa H Robinson

Joint Debtor(s):

Teresa Duarte Matias

Represented By
John F Brady
Lisa H Robinson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-21894 Francisco Javier Medina and Maria Guadalupe Medina

Chapter 13

#23.00 Trustee's Motion to Dismiss Case

EH__

Docket 134

Party Information

Debtor(s):

Francisco Javier Medina

Represented By
Tamar Terzian

Joint Debtor(s):

Maria Guadalupe Medina

Represented By
Tamar Terzian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-21974 Carlos Enrique Mendoza and Michelle Lea Mendoza

Chapter 13

#24.00 Trustee's Motion to Dismiss Case

EH__

Docket 109

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Carlos Enrique Mendoza

Represented By
John F Brady
Lisa H Robinson

Joint Debtor(s):

Michelle Lea Mendoza

Represented By
John F Brady
Lisa H Robinson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-23032 David R. Roberts and Crystal A Roberts

Chapter 13

#25.00 Trustee's Motion to Dismiss Case

EH__

Docket 61

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

David R. Roberts

Represented By
Javier H Castillo

Joint Debtor(s):

Crystal A Roberts

Represented By
Javier H Castillo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-23194 Ruben Estevan Avalos and Lorraine Connie Avalos

Chapter 13

#26.00 Trustee's Motion to Dismiss Case

EH__

Docket 110

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Ruben Estevan Avalos

Represented By
Todd L Turoci

Joint Debtor(s):

Lorraine Connie Avalos

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-24979 Jennifer L. Kurtz

Chapter 13

#27.00 Trustee's Motion to Dismiss Case

EH__

Docket 75

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/22/17

Party Information

Debtor(s):

Jennifer L. Kurtz

Represented By
Steven A Alpert

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-25621 Gildardo R Herrera and Stephanie D Herrera

Chapter 13

#28.00 Trustee's Motion to Dismiss Case

EH__

Docket 78

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Gildardo R Herrera

Represented By
Lisa H Robinson
John F Brady

Joint Debtor(s):

Stephanie D Herrera

Represented By
Lisa H Robinson
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-26237 Carlos Vincent Valdez and Grace G. Valdez

Chapter 13

#29.00 Trustee's Motion to Dismiss Case

EH__

Docket 51

Party Information

Debtor(s):

Carlos Vincent Valdez

Represented By
Gregory M Shanfeld

Joint Debtor(s):

Grace G. Valdez

Represented By
Gregory M Shanfeld

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-26275 Thomas Michael Plouffe, Sr. and Pamela Ann Plouffe

Chapter 13

#30.00 Trustee's Motion to Dismiss Case

EH__

Docket 53

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Thomas Michael Plouffe Sr.

Represented By
William Radcliffe

Joint Debtor(s):

Pamela Ann Plouffe

Represented By
William Radcliffe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-28068 Clarence White

Chapter 13

#31.00 Trustee's Motion to Dismiss Case

EH__

Docket 143

Party Information

Debtor(s):

Clarence White

Represented By
Steven A Wolvek

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-28595 Josue Luna and Fabiola Luna

Chapter 7

#32.00 Trustee's Motion to Dismiss Case

EH__

Docket 149

***** VACATED *** REASON: CASE CONVERTED TO CHAPTER 7
6/21/17**

Party Information

Debtor(s):

Josue Luna

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Fabiola Luna

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-28666 Mildred Goodridge Crawford

Chapter 13

#33.00 Trustee's Motion to Dismiss Case

EH__

Docket 176

Party Information

Debtor(s):

Mildred Goodridge Crawford

Represented By
Michael Smith
Craig K Streed
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-28940 Jose Castellanos and Hiliana Castellanos

Chapter 13

#34.00 Trustee's Motion to Dismiss Case

EH__

Docket 80

Party Information

Debtor(s):

Jose Castellanos

Represented By
Mark E Brenner

Joint Debtor(s):

Hiliana Castellanos

Represented By
Mark E Brenner

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-28955 Norma E Pizana

Chapter 13

#35.00 Trustee's Motion to Dismiss Case

EH__

Docket 78

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Norma E Pizana

Represented By
Ronald W Ask

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-29255 Dennis Lynn Campbell and Dawn Monique Campbell

Chapter 13

#36.00 Trustee's Motion to Dismiss Case

EH__

Docket 40

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/12/17**

Party Information

Debtor(s):

Dennis Lynn Campbell

Represented By
Edward G Topolski

Joint Debtor(s):

Dawn Monique Campbell

Represented By
Edward G Topolski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-30046 Hector M Rodriguez and Mary L Rodriguez

Chapter 13

#37.00 Trustee's Motion to Dismiss Case

EH__

Docket 53

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Hector M Rodriguez

Represented By
Michael A Younge

Joint Debtor(s):

Mary L Rodriguez

Represented By
Michael A Younge

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-30066 Mitchell Jeffrey Summers and Terra Carolina Summers

Chapter 13

#38.00 Trustee's Motion to Dismiss Case

EH__

Docket 118

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Mitchell Jeffrey Summers

Represented By
Lisa H Robinson
John F Brady

Joint Debtor(s):

Terra Carolina Summers

Represented By
Lisa H Robinson
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-30418 Armando Alonso

Chapter 13

#39.00 Trustee's Motion to Dismiss Case

EH__

Docket 61

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/21/17**

Party Information

Debtor(s):

Armando Alonso

Represented By

Ghada Helena Philips

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-30513 Jacquelyn Ann Deniston

Chapter 13

#40.00 Trustee's Motion to Dismiss Case

EH__

Docket 64

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Jacquelyn Ann Deniston

Represented By
Michael E Clark
Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-30626 Ronnie Elroy Carter and Cassandra Jean Carter

Chapter 13

#41.00 Trustee's Motion to Dismiss Case

EH__

Docket 75

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Ronnie Elroy Carter

Represented By
Michael E Clark
Barry E Borowitz

Joint Debtor(s):

Cassandra Jean Carter

Represented By
Michael E Clark
Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:13-30641 Jacob J Cannon and Danielle M Cannon

Chapter 13

#42.00 Trustee's Motion to Dismiss Case

EH__

Docket 65

Party Information

Debtor(s):

Jacob J Cannon

Represented By
Lisa H Robinson
John F Brady

Joint Debtor(s):

Danielle M Cannon

Represented By
Lisa H Robinson
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-10793 Robert Anthony Maruffo and Allison Marie Maruffo

Chapter 13

#43.00 Trustee's Motion to Dismiss Case

EH__

Docket 60

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Robert Anthony Maruffo

Represented By
Carey C Pickford

Joint Debtor(s):

Allison Marie Maruffo

Represented By
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-10795 Agnes Smith

Chapter 13

#44.00 Trustee's Motion to Dismiss Case

EH__

Docket 58

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17

Party Information

Debtor(s):

Agnes Smith

Represented By
James T Lillard

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-11281 Geoffrey J Kitilya

Chapter 13

#45.00 Trustee's Motion to Dismiss Case

EH__

Docket 60

Party Information

Debtor(s):

Geoffrey J Kitilya

Represented By
Tina H Trinh

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-11369 Robert Wayne Cook, Sr. and Kelly Danielle Cook

Chapter 13

#46.00 Trustee's Motion to Dismiss Case

EH__

Docket 110

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/28/17**

Party Information

Debtor(s):

Robert Wayne Cook Sr.

Represented By
Steven A Alpert

Joint Debtor(s):

Kelly Danielle Cook

Represented By
Steven A Alpert

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-11816 Arnel De Castro and Anna De Castro

Chapter 13

#47.00 Trustee's Motion to Dismiss Case

EH__

Docket 67

Party Information

Debtor(s):

Arnel De Castro

Represented By
Paul Y Lee

Joint Debtor(s):

Anna De Castro

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-11817 Kalenga Patrick Munongo and Janelle Nicole Munongo

Chapter 13

#48.00 Trustee's Motion to Dismiss Case

EH__

Docket 108

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Kalenga Patrick Munongo

Represented By
Paul Y Lee

Joint Debtor(s):

Janelle Nicole Munongo

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-12126 Simon E. Williams

Chapter 13

#49.00 Trustee's Motion to Dismiss Case

EH__

Docket 115

Party Information

Debtor(s):

Simon E. Williams

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-12355 Raafat Georgy

Chapter 13

#50.00 Trustee's Motion to Dismiss Case

EH__

Docket 67

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17

Party Information

Debtor(s):

Raafat Georgy

Represented By
Joseph R Manning Jr

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-12676 Jimmie Lee Bracy, Jr.

Chapter 13

#51.00 Trustee's Motion to Dismiss Case

EH__

Docket 137

Party Information

Debtor(s):

Jimmie Lee Bracy Jr.

Represented By
Gregory M Shanfeld

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-12693 Silvia Vargas

Chapter 13

#52.00 Trustee's Motion to Dismiss Case

EH__

Docket 62

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/19/17**

Party Information

Debtor(s):

Silvia Vargas

Represented By
Matthew D Resnik

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-12880 Tony P Trujillo and Carlen M Trujillo

Chapter 13

#53.00 Trustee's Motion to Dismiss Case

EH__

Docket 67

Party Information

Debtor(s):

Tony P Trujillo

Represented By
Michael Smith

Joint Debtor(s):

Carlen M Trujillo

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-12975 Deborah Lynn Gordon

Chapter 13

#54.00 Trustee's Motion to Dismiss Case

EH__

Docket 48

Party Information

Debtor(s):

Deborah Lynn Gordon

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-13083 John C Tapocik and Arisia D Tapocik

Chapter 13

#55.00 Trustee's Motion to Dismiss Case

EH__

Docket 58

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/28/17**

Party Information

Debtor(s):

John C Tapocik

Represented By
Stephen R Wade
W. Derek May

Joint Debtor(s):

Arisia D Tapocik

Represented By
Stephen R Wade
W. Derek May

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-13095 Maricella Garcia

Chapter 13

#56.00 Trustee's Motion to Dismiss Case

EH__

Docket 92

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/28/17**

Party Information

Debtor(s):

Maricella Garcia

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-13322 Remell J Johnson

Chapter 13

#57.00 Trustee's Motion to Dismiss Case

EH__

Docket 71

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17

Party Information

Debtor(s):

Remell J Johnson

Represented By
Andrew Edward Smyth
Stephen S Smyth
William J Smyth

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-13327 Diane Marie Harris

Chapter 13

#58.00 Trustee's Motion to Dismiss Case

EH__

Docket 92

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/21/17**

Party Information

Debtor(s):

Diane Marie Harris

Represented By

M Erik Clark

Michael E Clark

Nancy B Clark

Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-13573 Jaelyn R Young

Chapter 13

#59.00 Trustee's Motion to Dismiss Case

EH__

Docket 181

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/3/17**

Party Information

Debtor(s):

Jaelyn R Young

Represented By
Michael Smith
Sundee M Teeple
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-13884 Sylvia Jimenez Gomez

Chapter 13

#60.00 Trustee's Motion to Dismiss Case

EH__

Docket 49

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/22/17**

Party Information

Debtor(s):

Sylvia Jimenez Gomez

Represented By
Leonard J Cravens

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-14265 Ricardo Pimentel and Maria Pimentel

Chapter 13

#61.00 Trustee's Motion to Dismiss Case

EH__

Docket 50

Party Information

Debtor(s):

Ricardo Pimentel

Represented By
Tamar Terzian

Joint Debtor(s):

Maria Pimentel

Represented By
Tamar Terzian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-14384 William J English

Chapter 13

#62.00 Trustee's Motion to Dismiss Case

EH__

Docket 45

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/15/17

Party Information

Debtor(s):

William J English

Represented By
Eric C Morris

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-14942 Nicholas M. Morales and Bertha A. Galvan

Chapter 13

#63.00 Trustee's Motion to Dismiss Case

EH__

Docket 75

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/12/17**

Party Information

Debtor(s):

Nicholas M. Morales

Represented By
George J Paukert

Joint Debtor(s):

Bertha A. Galvan

Represented By
George J Paukert

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-15067 Jose A Garcia Partida

Chapter 13

#64.00 Trustee's Motion to Dismiss Case

EH__

Docket 98

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Jose A Garcia Partida

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-15246 David J Macias and Martha Macias

Chapter 13

#65.00 Trustee's Motion to Dismiss Case

EH__

Docket 65

Party Information

Debtor(s):

David J Macias

Represented By
Marjorie M Johnson

Joint Debtor(s):

Martha Macias

Represented By
Marjorie M Johnson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-15845 Alex Soto

Chapter 13

#66.00 Trustee's Motion to Dismiss Case

EH__

Docket 68

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17

Party Information

Debtor(s):

Alex Soto

Represented By
Natalie A Alvarado

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-15904 Derrick C Albalos

Chapter 13

#67.00 Trustee's Motion to Dismiss Case

EH__

Docket 106

Party Information

Debtor(s):

Derrick C Albalos

Represented By
David L Nelson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-16606 Leslie R Williams

Chapter 13

#68.00 Trustee's Motion to Dismiss Case

EH__

Docket 126

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17

Party Information

Debtor(s):

Leslie R Williams

Represented By
Michael Smith
Craig K Streed
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-17056 Ernesto Alonso Gomez

Chapter 13

#69.00 Trustee's Motion to Dismiss Case

EH__

Docket 42

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/26/17

Party Information

Debtor(s):

Ernesto Alonso Gomez

Represented By
Steven A Alpert

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-17490 Kenneth Mcewing Huff

Chapter 13

#70.00 Trustee's Motion to Dismiss Case

EH__

Docket 51

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Kenneth Mcewing Huff

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-17491 Rosalie Estella Crouch

Chapter 13

#71.00 Trustee's Motion to Dismiss Case

EH__

Docket 75

Party Information

Debtor(s):

Rosalie Estella Crouch

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-17627 Benjamin A. Omaiye and Susan G. Omaiye

Chapter 13

#72.00 Trustee's Motion to Dismiss Case

EH__

Docket 51

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/13/17**

Party Information

Debtor(s):

Benjamin A. Omaiye

Represented By
Lisa H Robinson
John F Brady

Joint Debtor(s):

Susan G. Omaiye

Represented By
Lisa H Robinson
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-18156 Jose Luis Gutierrez and Patricia Gutierrez

Chapter 13

#73.00 Trustee's Motion to Dismiss Case

EH__

Docket 40

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/27/17**

Party Information

Debtor(s):

Jose Luis Gutierrez

Represented By
Kelly Warren

Joint Debtor(s):

Patricia Gutierrez

Represented By
Kelly Warren

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-18445 Jose Angel Gutierrez Hernandez

Chapter 13

#74.00 Trustee's Motion to Dismiss Case

EH__

Docket 62

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/20/17**

Party Information

Debtor(s):

Jose Angel Gutierrez Hernandez

Represented By
Tamar Terzian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-18523 Dennis Williams

Chapter 13

#75.00 Trustee's Motion to Dismiss Case

EH__

Docket 85

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/15/17

Party Information

Debtor(s):

Dennis Williams

Represented By
Nima S Vokshori

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-18941 Richard Lee Harris

Chapter 13

#76.00 Trustee's Motion to Dismiss Case

EH__

Docket 54

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/14/17**

Party Information

Debtor(s):

Richard Lee Harris

Represented By
Michael G Spector

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-19029 Sheila Marie Dejesa

Chapter 13

#77.00 Trustee's Motion to Dismiss Case

EH__

Docket 66

Party Information

Debtor(s):

Sheila Marie Dejesa

Represented By
Lisa H Robinson
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-19089 Jeffrey Dean Paxson and Connie Sue Paxson

Chapter 13

#78.00 Trustee's Motion to Dismiss Case

EH__

Docket 51

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Jeffrey Dean Paxson

Represented By
Gregory M Shanfeld

Joint Debtor(s):

Connie Sue Paxson

Represented By
Gregory M Shanfeld

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-19818 Siosifa Ma Ahoia

Chapter 13

#79.00 Trustee's Motion to Dismiss Case

EH__

Docket 22

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Siosifa Ma Ahoia

Represented By
Michael E Clark

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-19913 Martin Caballero and Clementina Caballero

Chapter 13

#80.00 Trustee's Motion to Dismiss Case

EH__

Docket 95

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Martin Caballero

Represented By
Luis G Torres

Joint Debtor(s):

Clementina Caballero

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-20076 Delfina Ramos Hernandez

Chapter 13

#81.00 Trustee's Motion to Dismiss Case

EH__

Docket 60

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Delfina Ramos Hernandez

Represented By
Edward G Topolski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-20166 Rosa Partida

Chapter 13

#82.00 Trustee's Motion to Dismiss Case

EH__

Docket 113

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/22/17**

Party Information

Debtor(s):

Rosa Partida

Represented By
Mathew Alden

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-20692 Leonardo Martinez and Rosa Martinez

Chapter 13

#83.00 Trustee's Motion to Dismiss Case

EH__

Docket 83

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Leonardo Martinez

Represented By
Inez Tinoco-Vaca

Joint Debtor(s):

Rosa Martinez

Represented By
Inez Tinoco-Vaca

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-20797 Richard Goodwin, Jr

Chapter 7

#84.00 Trustee's Motion to Dismiss Case

EH__

Docket 85

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/12/17**

Party Information

Debtor(s):

Richard Goodwin Jr

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-21370 Imelda Tapia

Chapter 13

#85.00 Trustee's Motion to Dismiss Case

EH__

Docket 64

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/19/17**

Party Information

Debtor(s):

Imelda Tapia

Represented By
Anthony Wilaras

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-21454 Matilde Lopez and Rene Zamora

Chapter 13

#86.00 Trustee's Motion to Dismiss Case

EH__

Docket 50

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Matilde Lopez

Represented By
Luis G Torres

Joint Debtor(s):

Rene Zamora

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-21455 Raul Ruelas and Laura Ruelas

Chapter 13

#87.00 Trustee's Motion to Dismiss Case

EH__

Docket 33

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/28/17

Party Information

Debtor(s):

Raul Ruelas

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Laura Ruelas

Represented By
Patricia M Ashcraft

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-21613 Rigoberto Aguilar and Maria Aguilar

Chapter 13

#88.00 Trustee's Motion to Dismiss Case

EH__

Docket 105

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/12/17**

Party Information

Debtor(s):

Rigoberto Aguilar

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Maria Aguilar

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-22144 Gary Thomas Sanderson and Mari Lucianne Sanderson

Chapter 13

#89.00 Trustee's Motion to Dismiss Case

EH__

Docket 38

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/20/17**

Party Information

Debtor(s):

Gary Thomas Sanderson

Represented By
Todd L Turoci

Joint Debtor(s):

Mari Lucianne Sanderson

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-22147 Thomas Rodriguez Alcala

Chapter 13

#90.00 Trustee's Motion to Dismiss Case

EH__

Docket 62

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Thomas Rodriguez Alcala

Represented By
Halli B Heston

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-22362 James Lange and Michelle Lange

Chapter 13

#91.00 Trustee's Motion to Dismiss Case

EH__

Docket 108

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/13/17**

Party Information

Debtor(s):

James Lange

Represented By
Michael Smith
Sundee M Teeple
Craig K Streed

Joint Debtor(s):

Michelle Lange

Represented By
Michael Smith
Sundee M Teeple
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-22637 Michelle Ann Maki

Chapter 13

#92.00 Trustee's Motion to Dismiss Case

EH__

Docket 48

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Michelle Ann Maki

Represented By
Joel M Feinstein

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-22951 Wilfred David Pascual

Chapter 13

#93.00 Trustee's Motion to Dismiss Case

EH__

Docket 49

Party Information

Debtor(s):

Wilfred David Pascual

Represented By
Lisa H Robinson
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-23150 Vivian Munson

Chapter 13

#94.00 Trustee's Motion to Dismiss Case

EH__

Docket 164

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Vivian Munson

Represented By
Amanda G Billyard
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-23209 Evelyn Espudo McCorkle

Chapter 13

#95.00 Trustee's Motion to Dismiss Case

EH__

Docket 55

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Evelyn Espudo McCorkle

Represented By
Lazaro E Fernandez

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-23678 Liliana Gomez

Chapter 13

#96.00 Trustee's Motion to Dismiss Case

EH__

Docket 103

Party Information

Debtor(s):

Liliana Gomez

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-24083 Frederick Arnett Mikel

Chapter 13

#97.00 Trustee's Motion to Dismiss Case

EH__

Docket 112

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Frederick Arnett Mikel

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-24084 Michael Lee Barnes and Belinda Ann Barnes

Chapter 13

#98.00 Trustee's Motion to Dismiss Case

EH__

Docket 81

Party Information

Debtor(s):

Michael Lee Barnes

Represented By
Todd L Turoci

Joint Debtor(s):

Belinda Ann Barnes

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-24213 Rula Nino

Chapter 13

#99.00 Trustee's Motion to Dismiss Case

EH__

Docket 86

Party Information

Debtor(s):

Rula Nino

Represented By
Devin Sawdayi

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-24314 Timm Bruce Bennett

Chapter 13

#100.00 Trustee's Motion to Dismiss Case

EH__

Docket 69

Party Information

Debtor(s):

Timm Bruce Bennett

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-24366 Alan G Olsen and Pamela J Olsen

Chapter 13

#101.00 Trustee's Motion to Dismiss Case

EH__

Docket 106

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17

Party Information

Debtor(s):

Alan G Olsen

Represented By
Michael Smith
Craig K Streed

Joint Debtor(s):

Pamela J Olsen

Represented By
Michael Smith
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-24622 Carlos Alberto Garcia and Maria Gonzalez-Garcia

Chapter 13

#102.00 Trustee's Motion to Dismiss Case

EH__

Docket 71

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/19/17**

Party Information

Debtor(s):

Carlos Alberto Garcia

Represented By
Manfred Schroer

Joint Debtor(s):

Maria Gonzalez-Garcia

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-24888 Jesus Padilla Simental

Chapter 13

#103.00 Trustee's Motion to Dismiss Case

EH__

Docket 57

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/27/17**

Party Information

Debtor(s):

Jesus Padilla Simental

Represented By
Bryn C Deb

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-25156 Keith Raynard Burton and Brigitte Michelle Burton

Chapter 13

#104.00 Trustee's Motion to Dismiss Case

EH__

Docket 126

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Keith Raynard Burton

Represented By
Rabin J Pournazarian

Joint Debtor(s):

Brigitte Michelle Burton

Represented By
Rabin J Pournazarian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:14-25360 William Meineke and Kathie Meineke

Chapter 13

#105.00 Trustee's Motion to Dismiss Case

EH__

Docket 64

Party Information

Debtor(s):

William Meineke

Represented By
Todd B Becker

Joint Debtor(s):

Kathie Meineke

Represented By
Todd B Becker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-10421 Juan C Rodriguez and Cynthia J Rodriguez

Chapter 13

#106.00 Trustee's Motion to Dismiss Case

EH__

Docket 77

Party Information

Debtor(s):

Juan C Rodriguez

Represented By
Michael Smith

Joint Debtor(s):

Cynthia J Rodriguez

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-10464 Jose Agustin Nuno-Anaya and Nelly Nuno

Chapter 13

#107.00 Trustee's Motion to Dismiss Case

EH__

Docket 41

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Jose Agustin Nuno-Anaya

Represented By
April E Roberts

Joint Debtor(s):

Nelly Nuno

Represented By
April E Roberts

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-10465 Michael Lionel Story

Chapter 13

#108.00 Trustee's Motion to Dismiss Case

EH__

Docket 41

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Michael Lionel Story

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-10488 Jose L Rangel and Rosa M Rangel

Chapter 13

#109.00 Trustee's Motion to Dismiss Case

EH__

Docket 86

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Jose L Rangel

Represented By
Lisa H Robinson
John F Brady

Joint Debtor(s):

Rosa M Rangel

Represented By
Lisa H Robinson
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-10660 Patricia Eagan

Chapter 13

#110.00 Trustee's Motion to Dismiss Case

EH__

Docket 53

Party Information

Debtor(s):

Patricia Eagan

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-10910 Roque Campos

Chapter 13

#111.00 Trustee's Motion to Dismiss Case

EH__

Docket 26

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17

Party Information

Debtor(s):

Roque Campos

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-10926 Eduardo Nuno and Lilia Briseno

Chapter 13

#112.00 Trustee's Motion to Dismiss Case

EH__

Docket 52

Party Information

Debtor(s):

Eduardo Nuno

Represented By
James B Smith

Joint Debtor(s):

Lilia Briseno

Represented By
James B Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-10929 Christopher John Helme

Chapter 13

#113.00 Trustee's Motion to Dismiss Case

EH__

Docket 144

Party Information

Debtor(s):

Christopher John Helme

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-10938 Trinidad Galindo and Erika R. Galindo

Chapter 13

#114.00 Trustee's Motion to Dismiss Case

EH__

Docket 80

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Trinidad Galindo

Represented By
Michael Smith

Joint Debtor(s):

Erika R. Galindo

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-11020 Joseph Levi Riddle and Jessica Sue Riddle

Chapter 13

#115.00 Trustee's Motion to Dismiss Case

EH__

Docket 81

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/28/17

Party Information

Debtor(s):

Joseph Levi Riddle

Represented By
L. Tegan Rodkey

Joint Debtor(s):

Jessica Sue Riddle

Represented By
L. Tegan Rodkey

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-11104 Joe A Pickens, II

Chapter 13

#116.00 Trustee's Motion to Dismiss Case

EH__

Docket 74

Party Information

Debtor(s):

Joe A Pickens II

Represented By
William Radcliffe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-11271 Maria Isabel Aguirre-Ordaz

Chapter 13

#117.00 Trustee's Motion to Dismiss Case

EH__

Docket 50

Party Information

Debtor(s):

Maria Isabel Aguirre-Ordaz

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-12092 Edilberto Aguirre-Mendoza and Alba Zacarias-Cebrero

Chapter 13

#118.00 Trustee's Motion to Dismiss Case

EH__

Docket 41

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17

Party Information

Debtor(s):

Edilberto Aguirre-Mendoza

Represented By
Matthew D Resnik

Joint Debtor(s):

Alba Zacarias-Cebrero

Represented By
Matthew D Resnik

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-12168 Leslie A. Larson

Chapter 13

#119.00 Trustee's Motion to Dismiss Case

EH__

Docket 52

Party Information

Debtor(s):

Leslie A. Larson

Represented By
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-12174 Kathleen A Madero

Chapter 13

#120.00 Trustee's Motion to Dismiss Case

EH__

Docket 38

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/13/17**

Party Information

Debtor(s):

Kathleen A Madero

Represented By
Yoon O Ham

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-12404 Anthony E Turkson

Chapter 13

#121.00 Trustee's Motion to Dismiss Case

EH__

Docket 72

Party Information

Debtor(s):

Anthony E Turkson

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-12819 Dale Nohre

Chapter 13

#122.00 Trustee's Motion to Dismiss Case

EH__

Docket 22

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Dale Nohre

Represented By
Gary J Holt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-12820 Jose Ceja, Jr and Chasity Ann Ceja

Chapter 13

#123.00 Trustee's Motion to Dismiss Case

EH__

Docket 140

Party Information

Debtor(s):

Jose Ceja Jr

Represented By
Dana Travis

Joint Debtor(s):

Chasity Ann Ceja

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-12880 Presciliano Perez

Chapter 13

#124.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Presciliano Perez

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-13218 Ramiro J Cruz and Norma Idalia Cruz

Chapter 13

#125.00 Trustee's Motion to Dismiss Case

EH__

Docket 54

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/19/17**

Party Information

Debtor(s):

Ramiro J Cruz

Represented By
Summer M Shaw
Jenny L Doling

Joint Debtor(s):

Norma Idalia Cruz

Represented By
Summer M Shaw
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-13811 Christopher Lee Sumners

Chapter 13

#126.00 Trustee's Motion to Dismiss Case

EH__

Docket 66

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Christopher Lee Sumners

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-13917 Irene L. Edeza

Chapter 13

#127.00 Trustee's Motion to Dismiss Case

EH__

Docket 30

Party Information

Debtor(s):

Irene L. Edeza

Represented By
James D. Hornbuckle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-14339 Vincent K Jones

Chapter 13

#128.00 Trustee's Motion to Dismiss Case

EH__

Docket 55

Party Information

Debtor(s):

Vincent K Jones

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-14501 Vonetta M Mays

Chapter 13

#129.00 Trustee's Motion to Dismiss Case

EH__

Docket 132

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Vonetta M Mays

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-15054 Alvin Brown

Chapter 13

#130.00 Trustee's Motion to Dismiss Case

EH__

Docket 80

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Alvin Brown

Represented By
Daniel King

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-15296 Alfonso Arzola and Mary Arzola

Chapter 13

#131.00 Trustee's Motion to Dismiss Case

EH__

Docket 31

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Alfonso Arzola

Represented By
David Lozano

Joint Debtor(s):

Mary Arzola

Represented By
David Lozano

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-15314 Franklin Merl Thomas King

Chapter 13

#132.00 Trustee's Motion to Dismiss Case

EH__

Docket 61

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/21/17**

Party Information

Debtor(s):

Franklin Merl Thomas King

Represented By
Daniel King

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-15622 Anita R Giroth

Chapter 13

#133.00 Trustee's Motion to Dismiss Case

EH__

Docket 45

Party Information

Debtor(s):

Anita R Giroth

Represented By
Arturo A Burga

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Arturo A Burga

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-15801 Efrain Falcon

Chapter 13

#134.00 Trustee's Motion to Dismiss Case

EH__

Docket 80

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Efrain Falcon

Represented By
Daniela P Romero

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-15831 William R Parker and Cheryl Parker

Chapter 13

#135.00 Trustee's Motion to Dismiss Case

EH__

Docket 75

Party Information

Debtor(s):

William R Parker

Represented By
Julie J Villalobos

Joint Debtor(s):

Cheryl Parker

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-15970 David Anthony Lopez, Jr. and Linda Cristine Lopez

Chapter 13

#136.00 Trustee's Motion to Dismiss Case

EH__

Docket 49

Party Information

Debtor(s):

David Anthony Lopez Jr.

Represented By
Heather J Canning
Barry E Borowitz

Joint Debtor(s):

Linda Cristine Lopez

Represented By
Heather J Canning
Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-15971 Allen J Sheerin

Chapter 13

#137.00 Trustee's Motion to Dismiss Case

EH__

Docket 51

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Allen J Sheerin

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-16110 Rafael Bello

Chapter 13

#138.00 Trustee's Motion to Dismiss Case

EH__

Docket 35

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/29/17

Party Information

Debtor(s):

Rafael Bello

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-16128 Delkys Hyde

Chapter 13

#139.00 Trustee's Motion to Dismiss Case

EH__

Docket 33

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Delkys Hyde

Represented By
David L Nelson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-16158 George P. Solorio, Jr.

Chapter 13

#140.00 Trustee's Motion to Dismiss Case

EH__

Docket 55

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/19/17**

Party Information

Debtor(s):

George P. Solorio Jr.

Represented By
James D. Hornbuckle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-16367 John Stephen Puddy, Jr.

Chapter 13

#141.00 Trustee's Motion to Dismiss Case

EH__

Docket 30

Party Information

Debtor(s):

John Stephen Puddy Jr.

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-16535 James Anthony Fenwick and Stacey Pleasant Fenwick

Chapter 13

#142.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

James Anthony Fenwick

Represented By
Marjorie M Johnson

Joint Debtor(s):

Stacey Pleasant Fenwick

Represented By
Marjorie M Johnson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-16873 Brenda Morgan

Chapter 13

#143.00 Trustee's Motion to Dismiss Case

EH__

Docket 35

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/27/17**

Party Information

Debtor(s):

Brenda Morgan

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-17142 Elmer H Brady and Judy L Brady

Chapter 13

#144.00 Trustee's Motion to Dismiss Case

EH__

Docket 46

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Elmer H Brady

Represented By
Julie J Villalobos

Joint Debtor(s):

Judy L Brady

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-17441 Angelica Teresa Anguiano

Chapter 13

#145.00 Trustee's Motion to Dismiss Case

EH__

Docket 118

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/27/17**

Party Information

Debtor(s):

Angelica Teresa Anguiano

Represented By
Rabin J Pournazarian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-17476 Michael Brian Goodrich, Sr. and Kimberly JoAnn Carter

Chapter 13

#146.00 Trustee's Motion to Dismiss Case

EH__

Docket 154

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Michael Brian Goodrich Sr.

Represented By
Christopher J Langley

Joint Debtor(s):

Kimberly JoAnn Carter

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-17561 Cresencio Ramirez Ramirez and Maria Olga Ramirez

Chapter 13

#147.00 Trustee's Motion to Dismiss Case

EH__

Docket 98

Party Information

Debtor(s):

Cresencio Ramirez Ramirez

Represented By
John F Brady

Joint Debtor(s):

Maria Olga Ramirez

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-17743 Maria C. Ignacio

Chapter 13

#148.00 Trustee's Motion to Dismiss Case

EH__

Docket 40

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Maria C. Ignacio

Represented By
James D. Hornbuckle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-17937 Joe Roger Montes

Chapter 13

#149.00 Trustee's Motion to Dismiss Case

EH__

Docket 52

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Joe Roger Montes

Represented By
Stephen R Wade
W. Derek May

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-18258 Angelique Camille Miranda-Viola

Chapter 13

#150.00 Trustee's Motion to Dismiss Case

EH__

Docket 38

Party Information

Debtor(s):

Angelique Camille Miranda-Viola

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-18480 Sean A. Davis

Chapter 13

#151.00 Trustee's Motion to Dismiss Case

EH__

Docket 98

Party Information

Debtor(s):

Sean A. Davis

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-18734 Eduardo Javier Meza and Margaret Ruth Morales

Chapter 13

#152.00 Trustee's Motion to Dismiss Case

EH__

Docket 173

Party Information

Debtor(s):

Eduardo Javier Meza

Represented By
Dana Travis

Joint Debtor(s):

Margaret Ruth Morales

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-18942 Genaro Flores and Salome Flores

Chapter 13

#153.00 Trustee's Motion to Dismiss Case

EH__

Docket 75

Party Information

Debtor(s):

Genaro Flores

Represented By
Luis G Torres

Joint Debtor(s):

Salome Flores

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-19152 Carol Elizabeth Tenney

Chapter 13

#154.00 Trustee's Motion to Dismiss Case

EH__

Docket 48

Party Information

Debtor(s):

Carol Elizabeth Tenney

Represented By
David Lozano

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-19338 Jesus Aguilar and Maria G Aguilar

Chapter 13

#155.00 Trustee's Motion to Dismiss Case

EH__

Docket 41

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Jesus Aguilar

Represented By
Luis G Torres

Joint Debtor(s):

Maria G Aguilar

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-19542 Philipp Johannes Borner and Audrey Faustorilla Borner

Chapter 13

#156.00 Trustee's Motion to Dismiss Case

EH__

Docket 27

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Philipp Johannes Borner

Represented By
D Justin Harelik

Joint Debtor(s):

Audrey Faustorilla Borner

Represented By
D Justin Harelik

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-19804 Juan M Madueno Carrizoza

Chapter 13

#157.00 Trustee's Motion to Dismiss Case

EH__

Docket 53

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Juan M Madueno Carrizoza

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-19812 Miguel Vivar and Maria Vivar

Chapter 13

#158.00 Trustee's Motion to Dismiss Case

EH__

Docket 35

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Miguel Vivar

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Maria Vivar

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-19993 Jose R. Gonzalez and Maria S. Gonzalez

Chapter 13

#159.00 Trustee's Motion to Dismiss Case

EH__

Docket 37

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/20/17**

Party Information

Debtor(s):

Jose R. Gonzalez

Represented By
Juanita V Miller

Joint Debtor(s):

Maria S. Gonzalez

Represented By
Juanita V Miller

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-20023 Zachary Lee Nowak

Chapter 13

#160.00 Trustee's Motion to Dismiss Case

EH__

Docket 54

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Zachary Lee Nowak

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-20062 Lilia Iveth Fong

Chapter 13

#161.00 Trustee's Motion to Dismiss Case

EH__

Docket 37

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Lilia Iveth Fong

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-20153 Rama Cokrohadian Suhari

Chapter 13

#162.00 Trustee's Motion to Dismiss Case

EH__

Docket 50

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Rama Cokrohadian Suhari

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-20222 Marquis George Powell and Judy Ann Powell

Chapter 13

#163.00 Trustee's Motion to Dismiss Case

EH__

Docket 90

Party Information

Debtor(s):

Marquis George Powell Pro Se

Joint Debtor(s):

Judy Ann Powell Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-20410 Lewis Halfbreed Morris and Debra Denise Morris

Chapter 13

#164.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Lewis Halfbreed Morris

Represented By
David Lozano

Joint Debtor(s):

Debra Denise Morris

Represented By
David Lozano

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-20414 Sergio Contreras Contreras, Sr. and Myrian Iliana

Chapter 13

#165.00 Trustee's Motion to Dismiss Case

EH__

Docket 38

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Sergio Contreras Contreras Sr.

Represented By
David Lozano

Joint Debtor(s):

Myrian Iliana Contreras

Represented By
David Lozano

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-20628 Robert R. Gentile

Chapter 13

#166.00 Trustee's Motion to Dismiss Case

EH__

Docket 45

Party Information

Debtor(s):

Robert R. Gentile

Represented By
Michael Smith
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-20920 Gregorio Orozco Sotelo

Chapter 13

#167.00 Trustee's Motion to Dismiss Case

EH__

Docket 43

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/12/17**

Party Information

Debtor(s):

Gregorio Orozco Sotelo

Represented By
Lisa F Collins-Williams

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-20998 Eric Kissell

Chapter 13

#168.00 Trustee's Motion to Dismiss Case

EH__

Docket 43

Party Information

Debtor(s):

Eric Kissell

Represented By
William J Howell

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-21074 Primitivo Salvador Hernandez and Maria D Salvador

Chapter 13

#169.00 Trustee's Motion to Dismiss Case

EH__

Docket 27

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Primitivo Salvador Hernandez

Represented By
James Geoffrey Beirne

Joint Debtor(s):

Maria D Salvador Hernandez

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-21076 Guillermo Jorge Fitzmaurice and Emilia Fitzmaurice

Chapter 13

#170.00 Trustee's Motion to Dismiss Case

EH__

Docket 49

***** VACATED *** REASON: CASE DISMISSED 6/26/17**

Party Information

Debtor(s):

Guillermo Jorge Fitzmaurice

Represented By
Ronald W Ask

Joint Debtor(s):

Emilia Fitzmaurice

Represented By
Ronald W Ask

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-21201 Daniel J Hedlund

Chapter 13

#171.00 Trustee's Motion to Dismiss Case

EH__

Docket 43

Party Information

Debtor(s):

Daniel J Hedlund

Represented By
David L Nelson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-21271 Tony Sutor

Chapter 13

#172.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17

Party Information

Debtor(s):

Tony Sutor

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-21410 Eddie Hernandez

Chapter 13

#173.00 Trustee's Motion to Dismiss Case

EH__

Docket 77

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Eddie Hernandez

Represented By
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-21412 Adrienne J Garcelli and Paul Garcelli

Chapter 13

#174.00 Trustee's Motion to Dismiss Case

EH__

Docket 85

Party Information

Debtor(s):

Adrienne J Garcelli

Represented By
Andy C Warshaw

Joint Debtor(s):

Paul Garcelli

Represented By
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-21548 Chi Kan Yu

Chapter 13

#175.00 Trustee's Motion to Dismiss Case

EH__

Docket 139

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Chi Kan Yu

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-21760 Gabriel Francisco Nieves

Chapter 13

#176.00 Trustee's Motion to Dismiss Case

EH__

Docket 37

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Gabriel Francisco Nieves

Represented By
Brian J Soo-Hoo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-21887 Mark A. Aceves

Chapter 13

#177.00 Trustee's Motion to Dismiss Case

EH__

Docket 27

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Mark A. Aceves

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-21983 Pablo Javier Solis, Jr. and Norma Alicia Solis

Chapter 13

#178.00 Trustee's Motion to Dismiss Case

EH__

Docket 78

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Pablo Javier Solis Jr.

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Norma Alicia Solis

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-22033 Shyla L. Montgomery

Chapter 13

#179.00 Trustee's Motion to Dismiss Case

EH__

Docket 72

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Shyla L. Montgomery

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-22077 Lyle W Fields

Chapter 13

#180.00 Trustee's Motion to Dismiss Case

EH__

Docket 50

***** VACATED *** REASON: CASE DISMISSED 6/22/17**

Party Information

Debtor(s):

Lyle W Fields

Represented By
Lauren Rode

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-22143 Lisa L Hughes

Chapter 13

#181.00 Trustee's Motion to Dismiss Case

EH__

Docket 32

Party Information

Debtor(s):

Lisa L Hughes

Represented By
David L Nelson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-22294 Jonathan William Nicastro

Chapter 13

#182.00 Trustee's Motion to Dismiss Case

EH__

Docket 89

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Jonathan William Nicastro

Represented By
Rabin J Pournazarian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-22362 Catherine L Mires

Chapter 13

#183.00 Trustee's Motion to Dismiss Case

EH__

Docket 34

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/19/17

Party Information

Debtor(s):

Catherine L Mires

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:15-22392 Donald Leroy Woodruff

Chapter 13

#184.00 Trustee's Motion to Dismiss Case

EH__

Docket 83

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/13/17**

Party Information

Debtor(s):

Donald Leroy Woodruff

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-10048 Margaret Crain

Chapter 13

#185.00 Trustee's Motion to Dismiss Case

EH__

Docket 51

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Margaret Crain

Represented By
Lauren Rode

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-10066 Saul Lara Sanchez

Chapter 13

#186.00 Trustee's Motion to Dismiss Case

EH__

Docket 46

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Saul Lara Sanchez

Represented By
Brian J Soo-Hoo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-10257 Cecilia Orozco and Sergio Orozco

Chapter 13

#187.00 Trustee's Motion to Dismiss Case

EH__

Docket 35

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/21/17**

Party Information

Debtor(s):

Cecilia Orozco

Represented By
Majid Safaie

Joint Debtor(s):

Sergio Orozco

Represented By
Majid Safaie

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-10369 Melvin T. Marks and Maria S Peponas

Chapter 13

#188.00 Trustee's Motion to Dismiss Case

EH__

Docket 49

Party Information

Debtor(s):

Melvin T. Marks

Represented By
James D. Hornbuckle

Joint Debtor(s):

Maria S Peponas

Represented By
James D. Hornbuckle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-10385 Adolfo Gonzalez and Angelica Gonzalez

Chapter 13

#189.00 Trustee's Motion to Dismiss Case

EH__

Docket 45

Party Information

Debtor(s):

Adolfo Gonzalez

Represented By
Luis G Torres

Joint Debtor(s):

Angelica Gonzalez

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-10451 Shahla Salamat

Chapter 13

#190.00 Trustee's Motion to Dismiss Case

EH__

Docket 60

Party Information

Debtor(s):

Shahla Salamat

Represented By
Amid Bahadori

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-10604 Juan Manuel Plascencia De La Torre

Chapter 13

#191.00 Trustee's Motion to Dismiss Case

EH__

Docket 62

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Juan Manuel Plascencia De La Torre

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-10840 Joanne Casillas

Chapter 13

#192.00 Trustee's Motion to Dismiss Case

EH__

Docket 59

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17

Party Information

Debtor(s):

Joanne Casillas

Represented By
Paul Horn

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-11044 Ronald Wilbur Lake

Chapter 13

#193.00 Trustee's Motion to Dismiss Case

EH__

Docket 41

Party Information

Debtor(s):

Ronald Wilbur Lake

Represented By
David L Nelson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-11103 Jose D Quinones and Ana M Quinones

Chapter 13

#194.00 Trustee's Motion to Dismiss Case

EH__

Docket 55

Party Information

Debtor(s):

Jose D Quinones

Represented By
Jessica De Anda Leon

Joint Debtor(s):

Ana M Quinones

Represented By
Jessica De Anda Leon

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-11165 Efrain Figueroa

Chapter 13

#195.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Efrain Figueroa

Represented By
Raj T Wadhvani

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-11652 Janel M Faulks

Chapter 13

#196.00 Trustee's Motion to Dismiss Case

EH__

Docket 45

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Janel M Faulks

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-11655 Lynn Anne Rellins

Chapter 13

#197.00 Trustee's Motion to Dismiss Case

EH__

Docket 57

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Lynn Anne Rellins

Represented By
Javier H Castillo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-11781 Abdolreza Panahandeh and Nosratolmolook Panahandeh

Chapter 13

#198.00 Trustee's Motion to Dismiss Case

EH__

Docket 31

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Abdolreza Panahandeh

Represented By
Javier H Castillo

Joint Debtor(s):

Nosratolmolook Panahandeh

Represented By
Javier H Castillo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-11794 ROBERT A HAGUE and DIANNE L HAGUE

Chapter 13

#199.00 Trustee's Motion to Dismiss Case

EH__

Docket 69

Party Information

Debtor(s):

ROBERT A HAGUE

Represented By
Manfred Schroer

Joint Debtor(s):

DIANNE L HAGUE

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-11872 Garan Bales

Chapter 13

#200.00 Trustee's Motion to Dismiss Case

EH__

Docket 74

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Garan Bales

Represented By
Amanda G Billyard

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-11873 Juan Figueroa and Nancy Figueroa

Chapter 13

#201.00 Trustee's Motion to Dismiss Case

EH__

Docket 31

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17

Party Information

Debtor(s):

Juan Figueroa

Represented By
Inez Tinoco-Vaca

Joint Debtor(s):

Nancy Figueroa

Represented By
Inez Tinoco-Vaca

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-11981 Juana Mora

Chapter 13

#202.00 Trustee's Motion to Dismiss Case

EH__

Docket 55

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17

Party Information

Debtor(s):

Juana Mora

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12008 Darna Poole and Jerry Poole

Chapter 13

#203.00 Trustee's Motion to Dismiss Case

EH__

Docket 39

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/13/17**

Party Information

Debtor(s):

Darna Poole

Represented By
Todd B Becker

Joint Debtor(s):

Jerry Poole

Represented By
Todd B Becker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12031 Maria Lourdes Magallon

Chapter 13

#204.00 Trustee's Motion to Dismiss Case

EH__

Docket 47

Party Information

Debtor(s):

Maria Lourdes Magallon

Represented By
Leonard Pena

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12080 Jessica Megan Gillen

Chapter 13

#205.00 Trustee's Motion to Dismiss Case

EH__

Docket 27

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Jessica Megan Gillen

Represented By
Gregory M Shanfeld

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12158 Gustavo Valadez and Elizabeth Ann Valadez

Chapter 13

#206.00 Trustee's Motion to Dismiss Case

EH__

Docket 34

Party Information

Debtor(s):

Gustavo Valadez

Represented By
Eliza Ghanooni

Joint Debtor(s):

Elizabeth Ann Valadez

Represented By
Eliza Ghanooni

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12191 Valicia LaShawn Fennell

Chapter 13

#207.00 Trustee's Motion to Dismiss Case

EH__

Docket 44

Party Information

Debtor(s):

Valicia LaShawn Fennell

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12347 Jose Luis Ceballos and Edelmira Castro

Chapter 13

#208.00 Trustee's Motion to Dismiss Case

EH__

Docket 70

***** VACATED *****

Party Information

Debtor(s):

Jose Luis Ceballos

Represented By
David Lozano

Joint Debtor(s):

Edelmira Castro

Represented By
David Lozano

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12400 Ernestine Steppes

Chapter 13

#209.00 Trustee's Motion to Dismiss Case

EH__

Docket 34

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/21/17

Party Information

Debtor(s):

Ernestine Steppes

Represented By
Mathew Alden

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12453 Michael Joseph Fodor

Chapter 13

#210.00 Trustee's Motion to Dismiss Case

EH__

Docket 43

Party Information

Debtor(s):

Michael Joseph Fodor

Represented By
Michael R Totaro

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12521 Maria Madrid

Chapter 13

#211.00 Trustee's Motion to Dismiss Case

EH__

Docket 32

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/13/17**

Party Information

Debtor(s):

Maria Madrid

Represented By
Lauren Rode

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12609 Ryan J. Watson

Chapter 13

#212.00 Trustee's Motion to Dismiss Case

EH__

Docket 22

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17

Party Information

Debtor(s):

Ryan J. Watson

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12648 Jose Luis Beltran and Martha Mora

Chapter 13

#213.00 Trustee's Motion to Dismiss Case

EH__

Docket 23

Party Information

Debtor(s):

Jose Luis Beltran

Represented By
Carey C Pickford

Joint Debtor(s):

Martha Mora

Represented By
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12692 Arturo Villagrana

Chapter 13

#214.00 Trustee's Motion to Dismiss Case

EH__

Docket 32

Party Information

Debtor(s):

Arturo Villagrana

Represented By
Raj T Wadhvani

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12863 Willie Sanford, Jr. and Tiera M Williams

Chapter 13

#215.00 Trustee's Motion to Dismiss Case

EH__

Docket 60

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17

Party Information

Debtor(s):

Willie Sanford Jr.

Represented By
Gary J Holt

Joint Debtor(s):

Tiera M Williams

Represented By
Gary J Holt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12893 Natalie G Massie

Chapter 13

#216.00 Trustee's Motion to Dismiss Case

EH__

Docket 52

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/12/17**

Party Information

Debtor(s):

Natalie G Massie

Represented By
Kevin M Cortright

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12963 Kenneth L Salser

Chapter 13

#217.00 Trustee's Motion to Dismiss Case

EH__

Docket 23

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Kenneth L Salser

Represented By
Michael Smith
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-12986 Efren Rubio

Chapter 13

#218.00 Trustee's Motion to Dismiss Case

EH__

Docket 62

Party Information

Debtor(s):

Efren Rubio

Represented By
Inez Tinoco-Vaca

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-13007 Ruby Lee Frazier

Chapter 13

#219.00 Trustee's Motion to Dismiss Case

EH__

Docket 43

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Ruby Lee Frazier

Represented By
Michael R Totaro

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-13169 Teresa M. Dearmond

Chapter 13

#220.00 Trustee's Motion to Dismiss Case

EH__

Docket 53

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Teresa M. Dearmond

Represented By
Amanda G Billyard

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-13202 Horacio Valdez and Leticia Isabel Valdez

Chapter 13

#221.00 Trustee's Motion to Dismiss Case

EH__

Docket 46

Party Information

Debtor(s):

Horacio Valdez

Represented By
David Lozano

Joint Debtor(s):

Leticia Isabel Valdez

Represented By
David Lozano

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-13226 Michael J. Covington, II

Chapter 13

#222.00 Trustee's Motion to Dismiss Case

EH__

Docket 22

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Michael J. Covington II

Represented By
Ronald W Ask

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-13233 Sherry Ann Beardsley

Chapter 13

#223.00 Trustee's Motion to Dismiss Case

EH__

Docket 42

Party Information

Debtor(s):

Sherry Ann Beardsley

Represented By
Jeffrey D Larkin

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-13404 Alberto Plascencia and Martina Plascencia

Chapter 13

#224.00 Trustee's Motion to Dismiss Case

EH__

Docket 42

Party Information

Debtor(s):

Alberto Plascencia

Represented By
Paul Y Lee

Joint Debtor(s):

Martina Plascencia

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-13595 Robert P Contreras and Marie G Contreras

Chapter 13

#225.00 Trustee's Motion to Dismiss Case

EH__

Docket 34

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Robert P Contreras

Represented By
Michael Smith

Joint Debtor(s):

Marie G Contreras

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-13637 Noel Mallari

Chapter 13

#226.00 Trustee's Motion to Dismiss Case

EH__

Docket 36

Party Information

Debtor(s):

Noel Mallari

Represented By
David L Nelson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-13666 Benito Gonzalez Cardenas

Chapter 13

#227.00 Trustee's Motion to Dismiss Case

EH__

Docket 22

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Benito Gonzalez Cardenas

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-13716 Deborah D. Pierce

Chapter 13

#228.00 Trustee's Motion to Dismiss Case

EH__

Docket 23

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Deborah D. Pierce

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-14084 Martin Linares and Elvia Linares

Chapter 13

#229.00 Trustee's Motion to Dismiss Case

EH__

Docket 47

Party Information

Debtor(s):

Martin Linares

Represented By
Michael Smith
Craig K Streed

Joint Debtor(s):

Elvia Linares

Represented By
Michael Smith
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-14087 Donald L Maddox and Lisa A Maddox

Chapter 13

#230.00 Trustee's Motion to Dismiss Case

EH__

Docket 58

Party Information

Debtor(s):

Donald L Maddox

Represented By
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Lisa A Maddox

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-14108 Charles M. Wallace, Jr. and Raquel A. Wallace

Chapter 13

#231.00 Trustee's Motion to Dismiss Case

EH__

Docket 25

Party Information

Debtor(s):

Charles M. Wallace Jr.

Represented By
Robert W Ripley

Joint Debtor(s):

Raquel A. Wallace

Represented By
Robert W Ripley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-14169 Sally Michelle Greene

Chapter 13

#232.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Sally Michelle Greene

Represented By
Sunita N Sood

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-14201 Donald Leslie Ogden and Susan Kay Ogden

Chapter 13

#233.00 Trustee's Motion to Dismiss Case

EH__

Docket 32

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Donald Leslie Ogden

Represented By
Timothy S Huyck

Joint Debtor(s):

Susan Kay Ogden

Represented By
Timothy S Huyck

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-14287 Brent Duane Larson and Sarah Marnet Larson

Chapter 13

#234.00 Trustee's Motion to Dismiss Case

EH__

Docket 57

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Brent Duane Larson

Represented By
Carey C Pickford

Joint Debtor(s):

Sarah Marnet Larson

Represented By
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-14476 Juan Rene Fullen, Jr.

Chapter 13

#235.00 Trustee's Motion to Dismiss Case

EH__

Docket 44

Party Information

Debtor(s):

Juan Rene Fullen Jr.

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-14863 Samuel Garcia and Claudia Garcia

Chapter 13

#236.00 Trustee's Motion to Dismiss Case

EH__

Docket 24

Party Information

Debtor(s):

Samuel Garcia

Represented By
James Geoffrey Beirne

Joint Debtor(s):

Claudia Garcia

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-14868 Richard M. Orellano, II and Tiffany Orellano

Chapter 13

#237.00 Trustee's Motion to Dismiss Case

EH__

Docket 31

Party Information

Debtor(s):

Richard M. Orellano II

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Tiffany Orellano

Represented By
Patricia M Ashcraft

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-15097 Arlene Wilson Jackson

Chapter 13

#238.00 Trustee's Motion to Dismiss Case

EH__

Docket 35

Party Information

Debtor(s):

Arlene Wilson Jackson

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-15216 Charles Bowen Blanton and Heddy Maria Blanton

Chapter 13

#239.00 Trustee's Motion to Dismiss Case

EH__

Docket 40

Party Information

Debtor(s):

Charles Bowen Blanton

Represented By
Michael E Clark

Joint Debtor(s):

Heddy Maria Blanton

Represented By
Michael E Clark

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-15412 Pablo Flores

Chapter 13

#240.00 Trustee's Motion to Dismiss Case

EH__

Docket 45

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Pablo Flores

Represented By
Anthony P Cara

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-15479 David Becerra

Chapter 13

#241.00 Trustee's Motion to Dismiss Case

EH__

Docket 28

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

David Becerra

Represented By
Glenn Ward Calsada

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-15522 Jesus Danny Ontiveros, III and Marie Irene Ontiveros

Chapter 13

#242.00 Trustee's Motion to Dismiss Case

EH__

Docket 57

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Jesus Danny Ontiveros III

Represented By
Gary S Saunders

Joint Debtor(s):

Marie Irene Ontiveros

Represented By
Gary S Saunders

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-15581 Dexter Humphrey

Chapter 13

#243.00 Trustee's Motion to Dismiss Case

EH__

Docket 49

Party Information

Debtor(s):

Dexter Humphrey

Represented By
Michael J Hemming

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-15614 Donald Lloyd Maki

Chapter 13

#244.00 Trustee's Motion to Dismiss Case

EH__

Docket 54

Party Information

Debtor(s):

Donald Lloyd Maki

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-15615 Rigoberto Damian Ceja

Chapter 13

#245.00 Trustee's Motion to Dismiss Case

EH__

Docket 25

Party Information

Debtor(s):

Rigoberto Damian Ceja

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-15655 Steven C. Alvarez and Catalina J Alvarez

Chapter 13

#246.00 Trustee's Motion to Dismiss Case

EH__

Docket 91

Party Information

Debtor(s):

Steven C. Alvarez

Represented By
Michael Jay Berger

Joint Debtor(s):

Catalina J Alvarez

Represented By
Michael Jay Berger

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-15668 Roger C Jefferson

Chapter 13

#247.00 Trustee's Motion to Dismiss Case

EH__

Docket 77

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/3/17

Party Information

Debtor(s):

Roger C Jefferson

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-15678 Nicholas Asamo

Chapter 13

#248.00 Trustee's Motion to Dismiss Case

EH__

Docket 37

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Nicholas Asamo

Represented By
Stephen S Smyth
William J Smyth

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-15797 Kendra Susan Lewkow

Chapter 13

#249.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

Party Information

Debtor(s):

Kendra Susan Lewkow

Represented By
Morton J Grabel

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-16110 Peter J. Giummo

Chapter 13

#250.00 Trustee's Motion to Dismiss Case

EH__

Docket 62

Party Information

Debtor(s):

Peter J. Giummo

Represented By
Bruce D White

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-16179 Raul Navarrette and Leslie Navarrette

Chapter 13

#251.00 Trustee's Motion to Dismiss Case

EH__

Docket 51

Party Information

Debtor(s):

Raul Navarrette

Represented By
Paul Y Lee

Joint Debtor(s):

Leslie Navarrette

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-16235 Matthew Thomas Harper and Robin Jean Harper

Chapter 13

#252.00 Trustee's Motion to Dismiss Case

EH__

Docket 42

Party Information

Debtor(s):

Matthew Thomas Harper

Represented By
Norma Duenas

Joint Debtor(s):

Robin Jean Harper

Represented By
Norma Duenas

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-16263 Tanyua A Gates-Holmes

Chapter 13

#253.00 Trustee's Motion to Dismiss Case

EH__

Docket 37

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Tanyua A Gates-Holmes

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-16314 Anthony James Parker and Cynthia Parker

Chapter 13

#254.00 Trustee's Motion to Dismiss Case

EH__

Docket 37

Party Information

Debtor(s):

Anthony James Parker

Represented By
Michael E Clark
Barry E Borowitz

Joint Debtor(s):

Cynthia Parker

Represented By
Michael E Clark
Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-16359 Russell Steven Morrill

Chapter 13

#255.00 Trustee's Motion to Dismiss Case

EH__

Docket 23

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Russell Steven Morrill

Represented By
Phillip Myer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-16523 Zoraida Molina

Chapter 13

#256.00 Trustee's Motion to Dismiss Case

EH__

Docket 28

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/28/17**

Party Information

Debtor(s):

Zoraida Molina

Represented By
Samer A Nahas

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-16616 Timothy Wade Jones

Chapter 13

#257.00 Trustee's Motion to Dismiss Case

EH__

Docket 64

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/10/17**

Party Information

Debtor(s):

Timothy Wade Jones

Represented By
Norma Duenas

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-16856 Tony Apodaca and Lydia Apodaca

Chapter 13

#258.00 Trustee's Motion to Dismiss Case

EH__

Docket 24

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Tony Apodaca

Represented By
Julie J Villalobos

Joint Debtor(s):

Lydia Apodaca

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-16908 Oscar Chavez

Chapter 13

#259.00 Trustee's Motion to Dismiss Case

EH__

Docket 49

Party Information

Debtor(s):

Oscar Chavez

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-16909 Edward Edmund Zozaya and Georgia Parrilla Zozaya

Chapter 13

#260.00 Trustee's Motion to Dismiss Case

EH__

Docket 98

Party Information

Debtor(s):

Edward Edmund Zozaya

Represented By
Dana Travis

Joint Debtor(s):

Georgia Parrilla Zozaya

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-17017 Frank Tan

Chapter 13

#261.00 Trustee's Motion to Dismiss Case

EH__

Docket 36

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17

Party Information

Debtor(s):

Frank Tan

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-17031 Anderson L Pepper

Chapter 13

#262.00 Trustee's Motion to Dismiss Case

EH__

Docket 52

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/21/17**

Party Information

Debtor(s):

Anderson L Pepper

Represented By
Nancy Korompis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-17068 Cynthia L Tucker

Chapter 13

#263.00 Trustee's Motion to Dismiss Case

EH__

Docket 71

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Cynthia L Tucker

Represented By
Claudia L Phillips

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-17084 Katrina Renee McDowell

Chapter 13

#264.00 Trustee's Motion to Dismiss Case

EH__

Docket 73

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17

Party Information

Debtor(s):

Katrina Renee McDowell

Represented By
S Renee Sawyer Blume
Christopher J Langley
Matthew D Resnik

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-17215 Carmen Saucedo

Chapter 13

#265.00 Trustee's Motion to Dismiss Case

EH__

Docket 36

Party Information

Debtor(s):

Carmen Saucedo

Represented By
Michael Smith
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-17736 Willie Elvin Chambers and Marlene Shirley Chambers

Chapter 13

#266.00 Trustee's Motion to Dismiss Case

EH__

Docket 63

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/11/17**

Party Information

Debtor(s):

Willie Elvin Chambers

Represented By
Heather J Canning
Barry E Borowitz

Joint Debtor(s):

Marlene Shirley Chambers

Represented By
Heather J Canning
Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-17765 Mary Jones

Chapter 13

#267.00 Trustee's Motion to Dismiss Case

EH__

Docket 44

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/13/17**

Party Information

Debtor(s):

Mary Jones

Represented By
S Renee Sawyer Blume
Matthew D Resnik

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-17893 Ashley Douglas Faulstich

Chapter 13

#268.00 Trustee's Motion to Dismiss Case

EH__

Docket 47

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17

Party Information

Debtor(s):

Ashley Douglas Faulstich

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-17911 Elizabeth T Baker

Chapter 7

#269.00 Trustee's Motion to Dismiss Case

EH__

Docket 76

***** VACATED *** REASON: CASE CONVERTED TO CHAPTER 7 ON
6/9/17**

Party Information

Debtor(s):

Elizabeth T Baker

Represented By
Nancy Korompis

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-17916 Robert Gene Brantley and Kim Yvette Brantley

Chapter 13

#270.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17

Party Information

Debtor(s):

Robert Gene Brantley

Represented By
Steven A Alpert

Joint Debtor(s):

Kim Yvette Brantley

Represented By
Steven A Alpert

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-17951 Moises Martinez

Chapter 13

#271.00 Trustee's Motion to Dismiss Case

EH__

Docket 24

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/12/17**

Party Information

Debtor(s):

Moises Martinez

Represented By
Inez Tinoco-Vaca

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-18035 Jeanie Sullivan

Chapter 13

#272.00 Trustee's Motion to Dismiss Case

EH__

Docket 33

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/12/17**

Party Information

Debtor(s):

Jeanie Sullivan

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-18125 Marc Meisenheimer

Chapter 13

#273.00 Trustee's Motion to Dismiss Case

EH__

Docket 31

Party Information

Debtor(s):

Marc Meisenheimer

Represented By
Lionel E Giron
Kevin Tang

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-18182 Douglas Edward Goodman and Anne Louise Goodman

Chapter 13

#274.00 Trustee's Motion to Dismiss Case

EH__

Docket 50

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-18248 Juan Jose Franco

Chapter 13

#275.00 Trustee's Motion to Dismiss Case

EH__

Docket 54

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17

Party Information

Debtor(s):

Juan Jose Franco

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-18398 Jose Luis Rojas

Chapter 13

#276.00 Trustee's Motion to Dismiss Case

EH__

Docket 68

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Jose Luis Rojas

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-18430 Isaias Melo and Rosa Melo

Chapter 13

#277.00 Trustee's Motion to Dismiss Case

EH__

Docket 41

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Isaias Melo

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Rosa Melo

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-18526 Ana M. Oliver

Chapter 13

#278.00 Trustee's Motion to Dismiss Case

EH__

Docket 24

Party Information

Debtor(s):

Ana M. Oliver

Represented By
Michael Smith
Sundee M Teeple
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-18546 Alexis I Barahona

Chapter 13

#279.00 Trustee's Motion to Dismiss Case

EH__

Docket 32

Party Information

Debtor(s):

Alexis I Barahona

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-18621 John Wesley Wilson, Jr. and Michelle Janet Wilson

Chapter 13

#280.00 Trustee's Motion to Dismiss Case

EH__

Docket 38

Party Information

Debtor(s):

John Wesley Wilson Jr.

Represented By
Julie J Villalobos

Joint Debtor(s):

Michelle Janet Wilson

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-18724 Victor Quito Rabara

Chapter 13

#281.00 Trustee's Motion to Dismiss Case

EH__

Docket 36

Party Information

Debtor(s):

Victor Quito Rabara

Represented By
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-18820 Chase D Chung

Chapter 13

#282.00 Trustee's Motion to Dismiss Case

EH__

Docket 39

Party Information

Debtor(s):

Chase D Chung

Represented By
Daniel C Sever

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-18970 Pedro Canchola and Esther Valle Canchola

Chapter 13

#283.00 Trustee's Motion to Dismiss Case

EH__

Docket 55

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Pedro Canchola

Represented By
Leonard Pena

Joint Debtor(s):

Esther Valle Canchola

Represented By
Leonard Pena

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-18990 John D Castro, Jr and Jennifer Manda Castro

Chapter 13

#284.00 Trustee's Motion to Dismiss Case

EH__

Docket 34

Party Information

Debtor(s):

John D Castro Jr

Represented By
Chris A Mullen

Joint Debtor(s):

Jennifer Manda Castro

Represented By
Chris A Mullen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-19018 Ingeborg Margarete Preisendanz

Chapter 13

#285.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Ingeborg Margarete Preisendanz

Represented By
Danny K Agai

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-19169 Alfredo Navas

Chapter 13

#286.00 Trustee's Motion to Dismiss Case

EH__

Docket 35

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Alfredo Navas

Represented By
Sunita N Sood

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-19180 Barbara Rammell

Chapter 13

#287.00 Trustee's Motion to Dismiss Case

EH__

Docket 31

Party Information

Debtor(s):

Barbara Rammell

Represented By
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-19238 Debora Susan Johnson

Chapter 13

#288.00 Trustee's Motion to Dismiss Case

EH__

Docket 34

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Debora Susan Johnson

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-19240 Octavio Rubio Mata

Chapter 13

#289.00 Trustee's Motion to Dismiss Case

EH__

Docket 25

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/15/17**

Party Information

Debtor(s):

Octavio Rubio Mata

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-19396 Pamela Lynn King

Chapter 13

#290.00 Trustee's Motion to Dismiss Case

EH__

Docket 19

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/19/17

Party Information

Debtor(s):

Pamela Lynn King

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-19476 Sharon Burnom

Chapter 13

#291.00 Trustee's Motion to Dismiss Case

EH__

Docket 20

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Sharon Burnom

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-19656 Jerome D Williams

Chapter 13

#292.00 Trustee's Motion to Dismiss Case

EH__

Docket 41

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Jerome D Williams

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-19783 Melanie Lourdes Davis

Chapter 13

#293.00 Trustee's Motion to Dismiss Case

EH__

Docket 39

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Melanie Lourdes Davis

Represented By
Gary S Saunders

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-19869 Sonia Galicia

Chapter 13

#294.00 Trustee's Motion to Dismiss Case

EH__

Docket 23

Party Information

Debtor(s):

Sonia Galicia

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-19919 Timothy Leonard Johnson

Chapter 13

#295.00 Trustee's Motion to Dismiss Case

EH__

Docket 30

***** VACATED *** REASON: CASE DISMISSED 6/22/17**

Party Information

Debtor(s):

Timothy Leonard Johnson

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-19962 Fonda Cormier

Chapter 7

#296.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/20/17**

Party Information

Debtor(s):

Fonda Cormier

Represented By
Phillip Myer

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-19967 Jeremy Joseph Salas and Ronda-Sue Alice Marie Salas

Chapter 13

#297.00 Trustee's Motion to Dismiss Case

EH__

Docket 36

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Jeremy Joseph Salas

Represented By
Robert W Ripley

Joint Debtor(s):

Ronda-Sue Alice Marie Salas

Represented By
Robert W Ripley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Monday, July 24, 2017

Hearing Room 301

1:00 PM

6:16-20044 Charles Mickey Alligood

Chapter 13

#298.00 Trustee's Motion to Dismiss Case

EH__

Docket 35

Party Information

Debtor(s):

Charles Mickey Alligood

Represented By
Neil R Hedtke

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20081 Richard LaFayette Sellers

Chapter 13

#299.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

Party Information

Debtor(s):

Richard LaFayette Sellers

Represented By
Marjorie M Johnson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20133 Deborah Catherine Hamernik

Chapter 13

#300.00 Trustee's Motion to Dismiss Case

EH__

Docket 28

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Deborah Catherine Hamernik

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20163 Sandra M. Hankins

Chapter 13

#301.00 Trustee's Motion to Dismiss Case

EH__

Docket 22

Party Information

Debtor(s):

Sandra M. Hankins

Represented By
Michael Smith
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20186 Donald John Hanson and Mary Merzella Hanson

Chapter 13

#302.00 Trustee's Motion to Dismiss Case

EH__

Docket 22

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/29/17**

Party Information

Debtor(s):

Donald John Hanson

Represented By
Manfred Schroer

Joint Debtor(s):

Mary Merzella Hanson

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20219 Robert Ibay Orina and Emmyruth Amizola Orina

Chapter 13

#303.00 Trustee's Motion to Dismiss Case

EH__

Docket 36

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Robert Ibay Orina

Represented By
Timothy L McCandless

Joint Debtor(s):

Emmyruth Amizola Orina

Represented By
Timothy L McCandless

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20256 David J Darling

Chapter 13

#304.00 Trustee's Motion to Dismiss Case

EH__

Docket 21

Party Information

Debtor(s):

David J Darling

Represented By
April E Roberts

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20258 Matthew Bruce and Scott Bruce

Chapter 13

#305.00 Trustee's Motion to Dismiss Case

EH__

Docket 31

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Matthew Bruce

Represented By
Christopher Hewitt

Joint Debtor(s):

Scott Bruce

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20329 Gabriel Cruz

Chapter 13

#306.00 Trustee's Motion to Dismiss Case

EH__

Docket 26

Party Information

Debtor(s):

Gabriel Cruz

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20341 Joseph Paul Nassef and Lynne Marie Nassef

Chapter 13

#307.00 Trustee's Motion to Dismiss Case

EH__

Docket 28

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/3/17**

Party Information

Debtor(s):

Joseph Paul Nassef

Represented By
Bryant C MacDonald

Joint Debtor(s):

Lynne Marie Nassef

Represented By
Bryant C MacDonald

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20342 Ana I Murguia Owens

Chapter 13

#308.00 Trustee's Motion to Dismiss Case

EH__

Docket 27

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Ana I Murguia Owens

Represented By
Brian J Soo-Hoo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20459 Winnie Marie Quanstrom

Chapter 13

#309.00 Trustee's Motion to Dismiss Case

EH__

Docket 24

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17

Party Information

Debtor(s):

Winnie Marie Quanstrom

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20494 David Paul Zamarripa and Ruth Zamarripa

Chapter 13

#310.00 Trustee's Motion to Dismiss Case

EH__

Docket 48

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

David Paul Zamarripa

Represented By
Javier H Castillo

Joint Debtor(s):

Ruth Zamarripa

Represented By
Javier H Castillo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20632 Lisa Allison Wells

Chapter 13

#311.00 Trustee's Motion to Dismiss Case

EH__

Docket 33

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17

Party Information

Debtor(s):

Lisa Allison Wells

Represented By
Roland D Tweed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20773 Idalia Temblador-Baisa

Chapter 13

#312.00 Trustee's Motion to Dismiss Case

EH__

Docket 26

Party Information

Debtor(s):

Idalia Temblador-Baisa

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20813 Thong Huu Nguyen

Chapter 13

#313.00 Trustee's Motion to Dismiss Case

EH__

Docket 30

Party Information

Debtor(s):

Thong Huu Nguyen

Represented By
Yoon O Ham

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20861 Christopher Higgs

Chapter 13

#314.00 Trustee's Motion to Dismiss Case

EH__

Docket 24

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/13/17**

Party Information

Debtor(s):

Christopher Higgs

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20874 Irma Hernandez

Chapter 13

#315.00 Trustee's Motion to Dismiss Case

EH__

Docket 25

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17

Party Information

Debtor(s):

Irma Hernandez

Represented By
David T Egli

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20925 Reynauldo J Pennywell and Joyce D Pennywell

Chapter 13

#316.00 Trustee's Motion to Dismiss Case

EH__

Docket 20

Party Information

Debtor(s):

Reynauldo J Pennywell

Represented By
Michael Smith

Joint Debtor(s):

Joyce D Pennywell

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-20929 Don Stevie Gurule and Elaine Louise Gurule

Chapter 13

#317.00 Trustee's Motion to Dismiss Case

EH__

Docket 26

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Don Stevie Gurule

Represented By
Dana Travis

Joint Debtor(s):

Elaine Louise Gurule

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-21064 Gabriel Simon

Chapter 13

#318.00 Trustee's Motion to Dismiss Case

EH__

Docket 27

Party Information

Debtor(s):

Gabriel Simon

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-21181 Luis Fernando Buenrostro

Chapter 13

#319.00 Trustee's Motion to Dismiss Case

EH__

Docket 33

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Luis Fernando Buenrostro

Represented By
Sunita N Sood

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-21213 Bartholemew James Ratner and Pamela J Armijo-Ratner

Chapter 13

#320.00 Trustee's Motion to Dismiss Case

EH__

Docket 41

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17

Party Information

Debtor(s):

Bartholemew James Ratner

Represented By
H Christopher Coburn

Joint Debtor(s):

Pamela J Armijo-Ratner

Represented By
H Christopher Coburn

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-21232 Alejandro Salinas, Jr.

Chapter 13

#321.00 Trustee's Motion to Dismiss Case

EH__

Docket 41

Party Information

Debtor(s):

Alejandro Salinas Jr.

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:16-21233 Grady Singleton, III and Michelle Singleton

Chapter 13

#322.00 Trustee's Motion to Dismiss Case

EH__

Docket 32

Party Information

Debtor(s):

Grady Singleton III

Represented By
Paul Y Lee

Joint Debtor(s):

Michelle Singleton

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10001 Juan Carlos Lopez

Chapter 13

#323.00 Trustee's Motion to Dismiss Case

EH__

Docket 20

Party Information

Debtor(s):

Juan Carlos Lopez

Represented By
Stephen D Brittain

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10040 Tracie Cornett-Martin

Chapter 13

#324.00 Trustee's Motion to Dismiss Case

EH__

Docket 31

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Tracie Cornett-Martin

Represented By
Nathan Fransen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10102 Steven Leimel and Adela Leimel

Chapter 13

#325.00 Trustee's Motion to Dismiss Case

EH__

Docket 27

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/29/17**

Party Information

Debtor(s):

Steven Leimel

Represented By
Paul Y Lee

Joint Debtor(s):

Adela Leimel

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10144 Loreen J. Traister

Chapter 13

#326.00 Trustee's Motion to Dismiss Case

EH__

Docket 25

Party Information

Debtor(s):

Loreen J. Traister

Represented By
Dina Farhat

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10251 Gabriel Cortes

Chapter 13

#327.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Gabriel Cortes

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10310 Norma Brennan

Chapter 13

#328.00 Trustee's Motion to Dismiss Case

EH__

Docket 32

Party Information

Debtor(s):

Norma Brennan

Represented By
Gregory M Shanfeld

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10368 Patricia Lynn Fickes

Chapter 13

#329.00 Trustee's Motion to Dismiss Case

EH__

Docket 18

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Patricia Lynn Fickes

Represented By
Nancy Korompis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10414 Felipe Morales

Chapter 13

#330.00 Trustee's Motion to Dismiss Case

EH__

Docket 18

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/27/17

Party Information

Debtor(s):

Felipe Morales

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10469 Joe Nathan Banks

Chapter 13

#331.00 Trustee's Motion to Dismiss Case

EH__

Docket 36

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17

Party Information

Debtor(s):

Joe Nathan Banks

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10522 Joanne Saycon

Chapter 13

#332.00 Trustee's Motion to Dismiss Case

EH__

Docket 24

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17**

Party Information

Debtor(s):

Joanne Saycon

Represented By
Terrence Fantauzzi

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10617 Jose E Toledo and Antonia Toledo

Chapter 13

#333.00 Trustee's Motion to Dismiss Case

EH__

Docket 31

***** VACATED *** REASON: CASE DISMISSED 6/22/17**

Party Information

Debtor(s):

Jose E Toledo

Represented By
James Geoffrey Beirne

Joint Debtor(s):

Antonia Toledo

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10660 Xiomara Swiatkowski

Chapter 13

#334.00 Trustee's Motion to Dismiss Case

EH__

Docket 19

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/27/17

Party Information

Debtor(s):

Xiomara Swiatkowski

Represented By
Robert W Ripley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10681 Kisha Eugena Stegall-Hill

Chapter 13

#335.00 Trustee's Motion to Dismiss Case

EH__

Docket 44

Party Information

Debtor(s):

Kisha Eugena Stegall-Hill

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10702 Miriam Louise Preisendanz

Chapter 13

#336.00 Trustee's Motion to Dismiss Case

EH__

Docket 32

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

Miriam Louise Preisendanz

Represented By
Danny K Agai

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10742 William Fuentes and Martha C Orozco de Fuentes

Chapter 13

#337.00 Trustee's Motion to Dismiss Case

EH__

Docket 23

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/20/17**

Party Information

Debtor(s):

William Fuentes

Represented By
Marlin Branstetter

Joint Debtor(s):

Martha C Orozco de Fuentes

Represented By
Marlin Branstetter

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10787 Willie J Brooks

Chapter 13

#338.00 Trustee's Motion to Dismiss Case

EH__

Docket 22

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17

Party Information

Debtor(s):

Willie J Brooks

Represented By
Kevin Tang

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10811 Manuel Huertas

Chapter 13

#339.00 Trustee's Motion to Dismiss Case

EH__

Docket 33

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Party Information

Debtor(s):

Manuel Huertas

Represented By
Marcella Lucente

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10885 Guillermo Zamudio

Chapter 13

#340.00 Trustee's Motion to Dismiss Case

EH__

Docket 24

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Guillermo Zamudio

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-10886 Brian Tafolla and Katie Tafolla

Chapter 13

#341.00 Trustee's Motion to Dismiss Case

EH__

Docket 28

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17

Party Information

Debtor(s):

Brian Tafolla

Represented By
Paul Y Lee

Joint Debtor(s):

Katie Tafolla

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-12420 Frank Castodio

Chapter 13

#342.00 Trustee's Motion to Dismiss Case

EH__

Docket 37

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/13/17**

Party Information

Debtor(s):

Frank Castodio

Represented By
Lauren Rode

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-12710 Michael Montoya

Chapter 13

#343.00 Trustee's Motion to Dismiss Case

EH__

Docket 35

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Michael Montoya

Represented By
Suzette Douglas

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-12758 Luis A Jovel

Chapter 13

#344.00 Trustee's Motion to Dismiss Case

EH__

Docket 27

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/12/17

Party Information

Debtor(s):

Luis A Jovel

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

1:00 PM

6:17-12907 Gilbert R Nava

Chapter 13

#345.00 Trustee's Motion to Dismiss Case

EH__

Docket 22

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/18/17**

Party Information

Debtor(s):

Gilbert R Nava

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

3:00 PM

6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

Adv#: 6:17-01059 ASR Constructors Inc a California Corporation et a v. Gotte Electric, Inc. et

#346.00 CONT Motion for Order Authorizing Deposit of Disputed Funds and Granting Related Interpleader Relief

From: 5/30/17, 6/19/17

Also #347

EH__

Docket 37

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

Defendant(s):

UNITED STATES OF AMERICA

Represented By
Charles Parker

Western Alliance Bank, an Arizona

Pro Se

Carlin Law Group APC

Represented By
Kevin R Carlin

Bangerter Frazier & Graff PC

Represented By
Daniel P Wilde

Ledcor Construction, Inc., a

Represented By
Daniel P Scholz

Insurance Company Of The West

Represented By
Jennifer Leland
David B Shemano

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

3:00 PM

CONT... ASR Constructors Inc a California Corporation

Chapter 11

Gotte Electric, Inc.	Pro Se
Employment Development	Represented By Elisa B Wolfe-Donato
Steven Schonder	Pro Se
Angela Denise McKnight	Pro Se

Movant(s):

Inland Machinery, Inc.	Represented By James C Bastian Jr
Another Meridian Company, LLC	Represented By James C Bastian Jr
ASR Constructors Inc a California	Represented By James C Bastian Jr

Plaintiff(s):

Inland Machinery, Inc.	Represented By James C Bastian Jr
Another Meridian Company, LLC	Represented By James C Bastian Jr
ASR Constructors Inc a California	Represented By James C Bastian Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

3:00 PM

6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

Adv#: 6:17-01059 ASR Constructors Inc a California Corporation et a v. Gotte Electric, Inc. et

#347.00 CONT Status Conference RE: Complaint by ASR Constructors Inc a California Corporation, Another Meridian Company, LLC, Inland Machinery, Inc. against Gotte Electric, Inc., Insurance Company Of The West, Employment Development Department, Trico-Savi Business Park, L.P., a California limited partnership, Angela Denise McKnight, Cardlock Fuels Systems Inc., Steven Schonder, Western Alliance Bank, an Arizona corporation, UNITED STATES OF AMERICA, Carlin Law Group APC, Ledcor Construction, Inc., a Washington corporation, Bangerter Frazier & Graff PC. (Charge To Estate \$350.00). Nature of Suit: 02- Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

From: 5/16/17, 6/19/17

Also #346

EH__

Docket 1

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

Defendant(s):

UNITED STATES OF AMERICA

Represented By
Charles Parker

Western Alliance Bank, an Arizona

Pro Se

Carlin Law Group APC

Represented By
Kevin R Carlin

Bangerter Frazier & Graff PC

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

3:00 PM

CONT... ASR Constructors Inc a California Corporation Chapter 11

Daniel P Wilde

Ledcor Construction, Inc., a

Represented By
Daniel P Scholz

Insurance Company Of The West

Represented By
Jennifer Leland
David B Shemano

Gotte Electric, Inc.

Pro Se

Employment Development

Represented By
Elisa B Wolfe-Donato

Steven Schonder

Pro Se

Angela Denise McKnight

Pro Se

Plaintiff(s):

Inland Machinery, Inc.

Represented By
James C Bastian Jr

Another Meridian Company, LLC

Represented By
James C Bastian Jr

ASR Constructors Inc a California

Represented By
James C Bastian Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

3:00 PM

6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

#348.00 CONT Order (1) Setting Scheduling Hearing and Case Management Conference and (2) Requiring Status Report re **Another Meridian Company LLC**

From: 3/7/17, 7/11/17

Also #349 & #350

EH__

Docket 630

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

3:00 PM

6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

#349.00 CONT Order (1) Setting Scheduling Hearing and Case Management Conference and (2) Requiring Status Report re **Inland Machinery, Inc**

From: 3/7/17, 7/11/17

Also #348 & #350

EH__

Docket 630

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 24, 2017

Hearing Room 303

3:00 PM

6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

#350.00 CONT Order (1) Setting Scheduling Hearing and Case Management Conference and (2) Requiring Status Report re **ASR Constructors Inc**

From: 3/7/17, 7/11/17

Also #348 & #349

EH__

Docket 630

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:11-31782 Dina Guadalupe Garay

Chapter 13

#1.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 3966 Camellia Dr, San Bernardno, CA 92407

MOVANT: USA BANK NATIONAL ASSOCIATION

From: 4/4/17, 5/16/17, 6/20/17

EH__

Docket 68

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dina Guadalupe Garay

Represented By
Aalok Sikand
Vito Torchia - DISBARRED -

Movant(s):

U.S. BANK NATIONAL

Represented By
Megan E Lees

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:12-16380 Zerry B Holefield

Chapter 13

#2.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 15183 Edelweis Street, Fontana, CA 92336

MOVANT: DEUTSCHE BANK NATIONAL TRUST CO

From: 5/9/17, 6/20/17

EH__

Docket 110

***** VACATED *** REASON: ORDER ENTERED 7/12/17**

Tentative Ruling:

5/9/2017

Service is Proper
Opposition: Yes

Subject to cure or APO discussions, the Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under ¶ 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Zerry B Holefield

Represented By
Dale Parham - INACTIVE -
Michael Smith

Movant(s):

Deutsche Bank National Trust

Represented By
Joely Khanh Linh Bui
Mark T. Domeyer
Daniel K Fujimoto

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

CONT... Zerry B Holefield

Caren J Castle

Chapter 13

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:12-32682 Mark A Rowley and Catherine C Rowley

Chapter 13

#3.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 33035 Paoli Court, Temecula, CA 92592

MOVANT: HSBC BANK USA

From: 6/20/17

EH__

Docket 92

Tentative Ruling:

June 20, 2017

Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay and ¶3. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Mark A Rowley

Represented By
Don E Somerville
Tate C Casey

Joint Debtor(s):

Catherine C Rowley

Represented By
Don E Somerville
Tate C Casey

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

CONT... Mark A Rowley and Catherine C Rowley

Chapter 13

Movant(s):

HSBC Bank USA, National

Represented By
Alexander K Lee

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:13-11584 Raphael A Lavine and Marcia Eurita Lavine

Chapter 13

#4.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 31065 Pintail Way, Winchester, California 92596

MOVANT: DITECH FINANCIAL LLC

EH__

Docket 80

Tentative Ruling:

July 25, 2017

Service: Proper
Opposition: Yes

Subject to adequate protection discussions, the Court is inclined to GRANT relief from the stay under § 362(d)(1) based on failure to make post-petition payments. GRANT waiver of 4001(a)(3) stay and request under ¶ 3. Request for APO is DENIED as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Raphael A Lavine

Represented By
Frank X Ruggier
Steven A Alpert

Joint Debtor(s):

Marcia Eurita Lavine

Represented By
Frank X Ruggier
Steven A Alpert

**United States Bankruptcy Court
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

CONT... Raphael A Lavine and Marcia Eurita Lavine

Chapter 13

Movant(s):

Ditech Financial LLC

Represented By
Jeff Rawlings
Alexander K Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:14-11297 Mercedes S Damoo and Muralledharan Damoo

Chapter 13

#5.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 13985 Plum Hollow Ln, Chino Hills, CA 91709-4861

MOVANT: WELLS FARGO BANK N.A.

EH__

Docket 92

Tentative Ruling:

July 25, 2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1) based on failure to make post-petition payments. GRANT waiver of 4001(a)(3) stay and requests under ¶¶ 3 and 12. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Mercedes S Damoo

Represented By
Rehan Saeed

Joint Debtor(s):

Muralledharan Damoo

Represented By
Rehan Saeed

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Dane W Exnowski

**United States Bankruptcy Court
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10:00 AM

CONT... Mercedes S Damoo and Muralledharan Damoo

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:14-14265 Ricardo Pimentel and Maria Pimentel

Chapter 13

#6.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 7467 Eddy Ave, Riverside, CA 92509-3420

MOVANT: WELLS FARGO BANK NA

From: 5/9/17, 6/20/17

EH _____

Docket 47

Tentative Ruling:

Tentative Ruling:

5/9/2017

Service is Proper
Opposition: Yes

Parties to advise Court regarding adequate protection discussions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ricardo Pimentel

Represented By
Tamar Terzian

Joint Debtor(s):

Maria Pimentel

Represented By
Tamar Terzian

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

CONT... Ricardo Pimentel and Maria Pimentel

Chapter 13

Movant(s):

WELLS FARGO BANK, N. A.

Represented By
Dane W Exnowski
Melissa A Anderson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Courtroom 303 Calendar**

Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:15-10276 Mario Eduardo Rojo and Lourdes Rojo

Chapter 13

#7.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 5524 Kingsley Street, Montclair, CA 91763

MOVANT: FCI LENDER SERVICES, INC.

EH__

Docket 48

Tentative Ruling:

07/25/2017

Service: Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1) based on Debtor's failure to make required postpetition payments. DENY relief under § 362(d)(2) based on Debtor's lack of equity in the property because Movant failed to fill in the required information in ¶11(h) of the Real Property Declaration from Debtor's attached schedules. GRANT relief under ¶2 and ¶3. GRANT waiver of 4001(a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Mario Eduardo Rojo

Represented By
Phillip Myer

Joint Debtor(s):

Lourdes Rojo

Represented By
Phillip Myer

Movant(s):

FCI Lender Services, Inc., servicing

Represented By

**United States Bankruptcy Court
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

CONT... Mario Eduardo Rojo and Lourdes Rojo

Chapter 13

Edward G Schloss

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:16-13375 Antoine Williams

Chapter 13

#8.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 15244 Hawk Street, Fontana, CA 92336

MOVANT: US BANK NATIONAL ASSOCIATION

From: 4/25/17, 6/20/17

EH _____

Docket 46

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: Yes

While relief from stay appears warranted, parties to discuss adequate protection if
amounts in default are not fully cured by hearing.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Antoine Williams

Represented By
Gary Leibowitz

Movant(s):

U.S. Bank National Association, as

Represented By
Dane W Exnowski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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

CONT... Antoine Williams

Chapter 13

**United States Bankruptcy Court
Central District of California
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:16-15797 Kendra Susan Lewkow

Chapter 13

#9.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 30553 Greenway Cir, Temecula, CA 92592

MOVANT: PNC BANK NATIONAL ASSOCIATION

EH__

Docket 26

Tentative Ruling:

July 25, 2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1) based on failure to make post-petition payments. GRANT waiver of 4001(a)(3) stay and requests under ¶¶ 3, 6, and 12.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Kendra Susan Lewkow

Represented By
Morton J Grabel

Movant(s):

PNC Bank, National Association

Represented By
Kristin A Zilberstein
Sarah C McClain
Kelly M Raftery

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:16-16352 Gena Grossman

Chapter 7

#10.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 61583 Terrace Drive, Joshua Tree, CA 92252

MOVANT: SETERUS, INC.

EH__

Docket 41

Tentative Ruling:

07/25/2017

Service: Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1) based on Debtor's insufficient equity cushion. GRANT relief under ¶2, ¶3, and ¶12. GRANT waiver of 4001(a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Gena Grossman

Represented By
Robert L Firth

Movant(s):

Seterus Inc. as the authorized

Represented By
James F Lewin

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

10:00 AM

6:16-17724 Carlos Gutierrez and Josefina Gutierrez

Chapter 13

#11.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1553 N Granite Ave

MOVANT: WELLS FARGO BANK N.A.

From: 6/27/17, 7/11/17

EH__

Docket 34

Tentative Ruling:

7/11/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT relief from the § 1301(a) stay. GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3 and 12.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Carlos Gutierrez

Represented By
Patricia A Mireles

Joint Debtor(s):

Josefina Gutierrez

Represented By
Patricia A Mireles

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10:00 AM

CONT... Carlos Gutierrez and Josefina Gutierrez

Chapter 13

Movant(s):

Wells Fargo Bank, N.A.

Represented By

Kristin A Zilberstein

Kelly M Raftery

Oneika White-Dovlo

Nancy L Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:16-17768 Dispatch Transportation LLC

Chapter 7

#12.00 Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Action in non-bankruptcy forum

MOVANT: USA WASTE OF CALIFORNIA, INC

EH__

Docket 77

Tentative Ruling:

07/25/2017

BACKGROUND

On August 30, 2016 ("Petition Date"), Dispatch Transportation LLC ("Debtor") filed its petition for chapter 7 relief. Charles Daff is the duly appointed chapter 7 trustee ("Trustee").

On April 6, 2017, USA Waste of California, Inc. ("USA Waste") filed its Motion for an Order Authorizing the Examination of Craig Johnson and the Issuance of Subpoenas Duces Tecum to Commodity Trucking Acquisition, LLC ("CTA") and Craig Johnson Pursuant to Fed.R. Bankr.P. 2004 ("2004 Motion"). USA Waste brought its Motion on the basis that it believes the Debtor's case was filed in bad faith. Specifically, USA Waste believes the Debtor's asserts were transferred prepetition to CTA so that the Debtor could then file bankruptcy and discharge debts without having to liquidate its assets. In support, USA Waste asserts that CTA is run by the same managers, at the same location, with the same assets, and with representation of the same counsel as the Debtor.

In 2013, USA Waste commenced a lawsuit against the Debtor for Intentional Interference with Contractual Relations and for Unfair Competition (the "State Court Action"). Discovery was conducted and a motion for summary judgment was filed by the Debtor which was denied by the trial court. The Superior Court scheduled trial for August 2016 but then trailed the trial to September 2016. The instant petition was filed on August 30, 2016 – staying USA Waste's litigation against the Debtor.

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CONT... Dispatch Transportation LLC

Chapter 7

On June 27, 2017, USA Waste filed its Motion for Relief from the Automatic Stay – Action in Non-Bankruptcy Forum ("Motion") seeking an order modifying the automatic stay to permit USA Waste to proceed under nonbankruptcy law to enforce its remedies to proceed to final judgment in the State Court Action with the express limitation that enforcement of any final judgment shall be limited to proceeding against the Debtor as to property or earnings that are not property of the bankruptcy estate. (Docket No. 80, Proposed Order).

On July 11, 2017, the Debtor and CTA filed oppositions to the Motion. On July 18, 2017, USA Waste filed an Omnibus Reply. (Note: initially, an opposition had also been filed by interested party L.A. Arena Funding, LLC. However, that opposition was subsequently withdrawn.)

LEGAL STANDARD

To obtain relief from the automatic stay, the party seeking relief must first establish a *prima facie* case that "cause" exists for relief under § 362(d)(1). *Id.* Once a *prima facie* case has been established, the burden shifts to the debtor to show that relief from the stay is unwarranted. *Id.* If the movant fails to meet its initial burden to demonstrate cause, relief from the automatic stay should be denied. *Id.*

The Curtis Factors

Courts have identified various factors relevant to determining whether the stay should be lifted to allow a creditor to continue pending litigation in a non-bankruptcy forum. The bankruptcy court in the case of *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984) set forth a non-exclusive 12-factor test established to determine whether relief from stay to permit the pending litigation to continue in another forum is appropriate. *Id.* at 799-80 (cited with approval in *In re Plumberex Specialty Prod., Inc.*, 311 B.R. 551, 559 (Bankr. C.D. Cal. 2004) and *Kronemyer v. American Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (9th Cir. BAP 2009)).

The twelve factors include:

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the bankruptcy case;
3. Whether the foreign proceeding involves the debtor

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CONT...

Dispatch Transportation LLC

Chapter 7

as a fiduciary;

4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;

5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;

6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;

7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;

8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);

9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);

10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;

11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and

12. The impact of the stay on the parties and the "balance of hurt."

In re Curtis, 40 B.R. at 799-80. Not all of the twelve Curtis factors are relevant in every case. *In re Plumberex Specialty Prod., Inc.*, 311 B.R. at 560 (citations omitted). Nor is a court required to give each of the Curtis factors equal weight in making its determination. *Id.* Furthermore, the Ninth Circuit has held that grounds for granting relief to proceed in another forum are left to discretion of judge. *In re Castlerock Properties*, 781 F.2d 159,163 (9th Cir. 1986).

DISCUSSION

As a threshold matter, the Court need not resolve the factual disputes related to whether misrepresentations have been made about CTA's running of the Manning Pit

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CONT... Dispatch Transportation LLC

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and other related disputes. The Court shall instead turn to the *Curtis* factors to determine whether relief from stay is warranted at this juncture:

1. Whether the relief will result in a partial or complete resolution of the issues

As to this first factor, the Court finds that adjudication of the State Court Action is likely to result in a complete resolution of the issues between USA Waste and the bankruptcy estate. What will remain unresolved is the issue of enforcement of any judgment against third parties – including CTA. However, given that no cognizable argument has made that the dispute between CTA and USA Waste is likely to impact the bankruptcy estate other than by potentially reducing any potential claim it has against the estate, this factor weighs in favor of granting relief from stay.

2. The lack of any connection with or interference with the bankruptcy case

The Debtor asserts that there is no reason why the dispute between the parties cannot be resolved via the bankruptcy claims objection process. However, the Debtor's characterization of the dispute is not so simple. There has been no dispute that the dispute between USA Waste and the Debtor was at the trial stage in the Superior Court. As such, it is logical that the Superior Court is in a better position to finally resolve any issues related to the claim of USA Waste than the bankruptcy court. This factor weighs in favor of granting relief from stay.

3. Whether the foreign proceeding involves the debtor as a fiduciary

This factor is not applicable here.

4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases

The Superior Court has had the benefit of developing specific knowledge regarding the issues related to the dispute between the parties since the State Court Action was filed in 2013. Its specific knowledge of the issues in dispute weighs in favor of the granting of relief.

5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation

There is no assertion that the Debtor has any insurance available to pay claims that are the subject of the dispute. However, USA Waste has agreed to limit

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enforcement of any judgment against only non-estate property. This factor weighs in favor of granting relief from stay.

6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;

The State Court Action directly involves the Debtor. This factor weighs against granting relief from stay. The Court is cognizant that as a defunct corporation with few, if any, assets available to the defense of the State Court Action, that the Debtor may be at a disadvantage at trial in the Superior Court. Additionally, at present it appears that the Trustee is unlikely to expend estate resources on the defense of the Debtor. However, given CTA's strong interest in defending the Debtor in the State Court Action to avoid future litigation as to any potential successor and/or alter ego claims by USA Waste, the Court finds that this factor weighs in favor of granting relief from the automatic stay.

7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties

There has been no indication that any party would suffer legal prejudice from permitting the State Court Action to proceed.

8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c)

Seemingly this factor is inapplicable.

9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f)

Seemingly this factor is inapplicable.

10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;

As noted above, the State Court Action is at an advanced stage of litigation whereas this Court is only now becoming familiar with the facts regarding the protracted dispute between the parties. As such, judicial economy weighs in favor of granting relief from the automatic stay.

11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and

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CONT... Dispatch Transportation LLC

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The parties were prepared for trial when the bankruptcy petition was filed. The Debtor's claims that no one will defend the Debtor in the State Court Action and that default judgment will be entered against it are unpersuasive. In fact, the Debtor and CTA have both filed numerous pleadings in opposition to motions by USA Waste in the bankruptcy case and as noted above, CTA has a substantial interest in defending the Debtor's interests given that USA Waste's arguments thus far invariably point to a looming successor or alter ego claim against CTA.

12. The impact of the stay on the parties and the "balance of hurt."

On balance, the Court perceives no harm to the bankruptcy estate from permitting the State Court Action to continue. As to the remaining parties, the Court expects that denial of the Motion would result in more litigation in the bankruptcy court between the parties which would likely increase the costs of litigation for all parties. This factor appears neutral.

In addition to the foregoing, CTA and the Debtor have argued that the alter ego/successor claims USA Waste seeks to bring against CTA are exclusively claims of the estate, and that in seeking to assert these claims USA Waste may be interfering with the rights that the Trustee is currently trying to sell to CTA. The Court is unpersuaded by the arguments of CTA and the Debtor. While not technically before the Court as USA Waste has not filed a proposed amended complaint for the Court to review asserting alter ego or successor theories, in *Ahcom, Ltd. v. Smeding*, the Ninth Circuit held that if there is injury to the corporation that gives the corporation a right of action against the shareholders (e.g., where a shareholder converts or fraudulently transfers corporate assets), that claim is property of the bankruptcy estate. But absent a corporate right of action, a claim that shareholders treated the corporation as their alter ego to the detriment of a corporate creditor may be asserted only by the injured creditor. (9th Cir. 2010) 623 F3d 1248, 1251-1252 (applying Calif. law). Here, there has been no indication that USA Waste intends to bring an alter ego action on the basis of a particularized injury to the Debtor corporation. As such, there is no basis on which to conclude that USA Waste's potential action against CTA will interfere with/ or otherwise prejudice rights in claims owned by the bankruptcy estate.

TENTATIVE RULING

The Court's tentative ruling is to grant relief from the automatic stay to USA Waste as

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CONT... Dispatch Transportation LLC

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set forth in its proposed order. The Court does not opine on whether an amended complaint requires relief from the automatic stay.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Dispatch Transportation LLC

Represented By
Leonard M Shulman
Elyza P Eshaghi

Movant(s):

USA Waste of California, Inc.

Represented By
Paul J Laurin

Trustee(s):

Charles W Daff (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
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10:00 AM

6:16-19962 Fonda Cormier

Chapter 7

#13.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 15632 Dobbs Peak Lane Fontana CA 92336

MOVANT: CREDITOR TRINITY FINANCIAL SERVICES

From: 5/30/17, 6/20/17

EH__

Docket 25

***** VACATED *** REASON: ORDER ENTERED 6/27/17**

Tentative Ruling:

5/30/2017

Service is Improper
Opposition: None

The Court is inclined to CONTINUE the hearing for service on Debtor pursuant to Local Rule 4001-(1)(c)(C)(i).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Fonda Cormier

Represented By
Phillip Myer

Movant(s):

Trinity Financial Services LLC

Represented By
Henry D Paloci

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:16-20632 Lisa Allison Wells

Chapter 13

#14.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2006 INFINITY M35 SEDAN

MOVANT: JPMORGAN CHASE BANK NA

EH__

Docket 31

Tentative Ruling:

07/25/2016

Service: Proper

Opposition: None

GRANT relief from the stay under §§ 362(d)(1) based on Movant's assertion that Movant regained possession of property prepetition on November 11, 2016, and Debtor's failure to make required postpetition payments. GRANT waiver of 4001(a)(3) stay. GRANT relief under ¶2. DENY relief under ¶11 as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Lisa Allison Wells

Represented By
Roland D Tweed

Movant(s):

JPMorgan Chase Bank, N.A.

Represented By
Drew A Callahan

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:16-21234 Frank A Horzen and Barbara A Horzen

Chapter 13

#15.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 19579 Casmelia Street, Rialto, CA 92377

MOVANT: DEVELOPER'S CAPITAL INC

From: 5/9/17, 6/20/17

EH__

Docket 34

***** VACATED *** REASON: ORDER ENTERED 7/19/17**

Tentative Ruling:

5/9//2017

Service is Proper
Opposition: Yes

The Court is inclined to DENY the motion without prejudice. Movant's request for relief only requests relief under § 362(d)(2). Section 362(d)(2) requires Movant to show that the property is unnecessary to an effective reorganization and that Debtors have no equity in the property. This case is a Chapter 13 proceeding and the property at issue is Debtors' primary residence. In this situation, absent any indication to the contrary, the property is necessary to an effective reorganization. Furthermore, Movant does not identify the fair market value of the property or whether there are any additional liens on the property, and, therefore, has not demonstrated that Debtors have no equity in the property.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Frank A Horzen

Represented By
Paul Y Lee

**United States Bankruptcy Court
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Courtroom 303 Calendar**

Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

CONT... Frank A Horzen and Barbara A Horzen

Chapter 13

Joint Debtor(s):

Barbara A Horzen

Represented By
Paul Y Lee

Movant(s):

Developers Capital, Inc., Employees

Represented By
Russel T Little

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:17-11670 AMANDO MORALES and ALICIA MALDONADO

Chapter 7

#16.00 CONT Motion for relief from automatic stay with supporting declarations
ACTION IN NON-BANKRUPTCY FORUM RE: Real Property

MOVANT: MARTHA E GUERRERO AND EDUARDO E GUERRERO

FROM: 4/25/17, 5/30/17, 7/11/17

EH__

Docket 11

***** VACATED *** REASON: CONTINUED TO 8/22/17 AT 10:00 A.M.**

Tentative Ruling:

5/30/17

Debtor's opposition argues that the real estate contract is an executory contract that can be rejected in bankruptcy. While providing an applicable citation for that assertion, Debtor does not apply the legal standard to the facts of this case.

Nevertheless, it appears that Debtor's characterization of the contract as "executory" may have merit. While Movant, in the motion, states that "all contingencies had been removed," and, in the reply, states that they "dutifully removed all their contractual contingencies," the state court complaint submitted to support their motion states, in paragraph 23: "Plaintiffs have fully performed all conditions, covenants, and promises required by them on their part to be performed in accordance with the terms and conditions of the contract, *except* the final payment for the purchase of the Property." (emphasis added). While Movants appear to have made the initial deposit into escrow, it does not appear that the final purchase price was tendered.

"[A]n 'executory contract' that can be rejected in bankruptcy is a contract on which performance remains due on both sides at the time of the bankruptcy petition." *Matter of Newcomb*, 744 F.2d 621, 624 (8th Cir. 1984); *see also In re Texscan Corp.*, 976 F.2d 1269-1271-72 (9th Cir. 1992). In *Newcomb*, the Court held that when the funds had already been transferred into escrow, there was no executory contract – no material obligations remained on the part of the grantor. *See id.*

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CONT... **AMANDO MORALES and ALICIA MALDONADO**

Chapter 7

In the Ninth Circuit, a real estate sales contract remains executory until the full purchase price is deposited into escrow by the purchaser. *See In re Hertz*, 536 B.R. 434, 439-41 (Bankr. C.D. Cal. 2015) (an extended discussion on when a purchase contract loses its executory nature).

Given that the real estate purchase contract may be an executory contract that shortly will be rejected by operation of law under 11 U.S.C. § 365(d)(1), and that Movants are seeking a state court order for specific performance under the contract, granting relief from stay would be improper because the state court proceedings would interfere with the bankruptcy court proceedings. Interference with the administration of the estate is the most important consideration when considering a motion for relief from stay to proceed with state court litigation. *See In re Roger*, 539 B.R. 837, 845 C.D. Cal. 2015) ("According to the court in *Curtis*, the most importance factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate. Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit."). Here, there is a possibility of significant interference with the bankruptcy estate.

Tentative Ruling:

For the foregoing reasons, the Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

AMANDO MORALES

Represented By
William D Gurney

Joint Debtor(s):

ALICIA MALDONADO JIMENEZ

Represented By
William D Gurney

Movant(s):

Eduardo E. Guerrero

Represented By

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CONT... AMANDO MORALES and ALICIA MALDONADO

Chapter 7

Christopher J Langley

Trustee(s):

Charles W Daff (TR)

Represented By
Brandon J Iskander
Lynda T Bui

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10:00 AM

6:17-12342 Paul David Caballero and Tami Cirrincione Caballero

Chapter 7

#17.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2008 Passport 245Rb, Vin: 4YDT2452986410651

MOVANT: MEDALLION BANK

EH__

Docket 12

Tentative Ruling:

July 25, 2017
Service is Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Paul David Caballero

Represented By
Mona V Patel

Joint Debtor(s):

Tami Cirrincione Caballero

Represented By
Mona V Patel

Movant(s):

Medallion Bank

Represented By
Tyneia Merritt

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10:00 AM

CONT... Paul David Caballero and Tami Cirrincione Caballero

Chapter 7

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:17-12415 Russell R. Riggs and Dalene M. Riggs

Chapter 7

#18.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 22 E. Shore Drive, Vernon, New Jersey 07462-3437

MOVANT: BAYVIEW LOAN SERVICING LLC

EH__

Docket 14

Tentative Ruling:

07/25/2017

Service: Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1) based on Debtor's inadequate equity cushion. The Court also GRANTS relief from stay under § 362(d)(2) as there is no equity in the Property. GRANT relief under ¶2 and ¶3. GRANT waiver of 4001(a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Russell R. Riggs

Represented By
Robert Jeffrey Gerber

Joint Debtor(s):

Dalene M. Riggs

Represented By
Robert Jeffrey Gerber

Movant(s):

BAYVIEW LOAN SERVICING,

Represented By

**United States Bankruptcy Court
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10:00 AM

CONT... Russell R. Riggs and Dalene M. Riggs

Chapter 7

Nichole Glowin

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:17-12886 Ryan Keith Richardson and Joyce Nanette Richardson

Chapter 7

#19.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11666 Oak Knoll Court, Fontana, CA

MOVANT: U.S. BANK, NA AS LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST

From: 6/20/17, 7/11/17

EH__

Docket 23

Tentative Ruling:

June 20, 2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Ryan Keith Richardson

Represented By
Ronald B Talkov

Joint Debtor(s):

Joyce Nanette Richardson

Represented By
Ronald B Talkov

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CONT... Ryan Keith Richardson and Joyce Nanette Richardson

Chapter 7

Movant(s):

U.S. BANK, NA AS LEGAL TITLE

Represented By
Diane Weifenbach

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:17-14019 Osbaldo Concencion Martinez

Chapter 13

#21.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1567 Riverside Drive, Barstow, CA 92311; 860 Nancy St., Barstow, CA 92311; 36891 Livingston Ln., Hinkley, CA 92347; 26484 Highway #58, Barstow, CA 92311; 25494 Agate Rd., Barstow, CA 92311 Under 11 U.S.C. § 362 (with supporting declarations) (Real Property)

MOVANT: SAN BERNARDINO COUNTY TREASURER AND TAX COLLECTOR

CASE DISMISSED 5/30/17

From: 6/27/17, 7/11/17

EH__

Docket 10

Tentative Ruling:

07/25/2017

BACKGROUND

On May 12, 2017, Osbaldo Martinez ("Debtor") filed for chapter 13 relief. The Debtor's case was dismissed on May 30, 2017, for failure to file information. On June 2, 2017, the San Bernardino County Treasurer & Tax Collector ("County") filed its Motion for Relief from Stay seeking in rem relief ("Motion") as to certain properties located at 1567 Riverside Drive, Barstow, CA 92311; 860 Nancy St., Barstow, CA 92311; 36891 Livingston Ln., Hinkley, CA 92347; 26484 Highway #58, Barstow, CA (the "Properties").

The Motion was set for hearing on July 11, 2017. Prior to the hearing on the Motion, the Court vacated the matter specifically given the filing of the Motion subsequent to the dismissal of the case. The County notified the Court that it intended to appear at the July 11, 2017, hearing to request a ruling. At the hearing, the County argued that the Court's dismissal order specifically retained its jurisdiction over issues arising under § 362. However, the Court indicated that it was problematic to permit

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CONT... **Osbaldo Concencion Martinez**

Chapter 13

motions to be filed after the case had been dismissed without any limiting factor as to when such a motion could be filed. The Court continued the hearing and required further briefing regarding whether the Court has jurisdiction to enter an order on a motion requesting in rem relief which is filed after the bankruptcy case has been dismissed.

DISCUSSION

The County has cited two cases in support of its position. The first case is *In re Cruz*, 516 B.R. 594 (9th Cir. BAP 2014), an appeal from a ruling of this Court. Here, the Court finds that *Cruz* is inapplicable to the facts of the case at bar. Although the BAP referenced the Court's retention of jurisdiction of issues arising under § 362 in its decision, the BAP's decision permitting the post-dismissal grant of relief from stay also considered that *Cruz* involved a request for annulment of the stay. In *Cruz*, a foreclosure sale of property that was potentially property of the debtor's estate had been sold in the short period between the filing of the case and dismissal. Thus, annulment was appropriate even after dismissal for the creditor to ensure that its actions taken while the stay was still pending, could be ratified by the Court. The instant Motion contains no request for annulment and makes no assertion that any actions were taken during the pendency of the bankruptcy case.

The other case cited by the County is *Sinclair v. Bank of Am., N.A. (In re Sinclair)*, 2013 Bankr. LEXIS 4657, *4 (B.A.P. 9th Cir. May 28, 2013), similar to *Cruz* involves a post-dismissal request for annulment to address actions taken during the pendency of a bankruptcy. Again, this situation is plainly distinguishable from the instant Motion which involves no request for annulment. Moreover, *Sinclair*, undercuts the County's argument in that it recognizes that there must be limits on post-dismissal bankruptcy jurisdiction:

Post-dismissal bankruptcy jurisdiction is generally limited. The bankruptcy court retains jurisdiction to dispose of ancillary matters, including construing and interpreting its orders. [*Aheong v. Mellon Mortgage Co. (In re Aheong)*, 276 B.R. 233, 241 (9th Cir. BAP 2002)]. It may not, however, "grant new relief independent of its prior rulings once the underlying action has been dismissed." *Tsafaroff v. Taylor (In re Taylor)*, 884 F.2d 478, 481 (9th Cir. 1989) (citing *Armel Laminates, Inc. v. Lomas & Nettleton Co. (In re Income Prop. Builders, Inc.)*, 699

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6:17-14363 Victor George and Manju Pudussery

Chapter 7

#22.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 MERCEDES-BENZ GLK250, VIN WDCGG0EB2FG423659

MOVANT: TD AUTO FINANCE LLC

EH__

Docket 16

Tentative Ruling:

July 25, 2017
Service is Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1) based on a lack of equity cushion and intention to surrender. GRANT relief from stay under § 362 (d)(2) based on lack of equity. GRANT waiver of 4001(a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Victor George

Represented By
Richard G Heston

Joint Debtor(s):

Manju Pudussery

Represented By
Richard G Heston

Movant(s):

TD Auto Finance LLC

Represented By
Sheryl K Ith

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10:00 AM

CONT... Victor George and Manju Pudussery

Chapter 7

Trustee(s):

Todd A. Frealy (TR)

Pro Se

United States Bankruptcy Court
Central District of California
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:17-14783 Silvia Alvarez

Chapter 13

#23.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Ford Fusion, VIN 3FA6P0HD9ER234647

MOVANT: FORD MOTOR CREDIT COMPANY LLC

CASE DISMISSED 6/26/17

EH__

Docket 12

*** VACATED *** REASON: case dismissed 6/26/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Silvia Alvarez

Represented By
Filemon Kevin Samson III

Movant(s):

Ford Motor Credit Company LLC

Represented By
Sheryl K Ith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:17-15037 Jun Seok Lee

Chapter 7

#24.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 5628 VAN BUREN BLVD., RIVERSIDE, CA 92503 .

MOVANT: 5700 VAN BUREN BLVD LLC

CASE DISMISSED 7/5/17

EH__

Docket 11

Tentative Ruling:

07/25/2017

Service: Proper

Opposition: No

The Court GRANTS Relief under § 362(d)(1) based on the following: (1) Debtor failed to pay rent, (2) Movant gave appropriate notice to Debtor of their intention to terminate Debtor's tenancy if Debtor did not pay overdue rent, (3) Debtor failed to pay overdue rent, and (4) Movant affirmed their intention to terminate the tenancy by filling a complaint for unlawful detainer. Therefore, "Cause" is established under § 362(d)(1) because Debtor's lease is terminated and the Debtor retains only a possessory interest with regard to the leased property. In re Windmill Farms, Inc., 841 F.2d 1467, 1469-71 (9th Cir. 1988) (Holding that a lease of real property is terminated under California law when the lessor affirms his election to terminate the lease as expressed in a notice to pay rent or quit which the lessor has previously served upon the lessee); See also In re Perl, 513 B.R. 566, 576 (9th Cir. BAP 2014) (Holding that physical occupation of a Residence constitutes a possessory interest under California law that is protected by the automatic stay, making a motion for relief from stay necessary). The Court is also inclined to GRANT relief under § 362(d)(2) as Debtor has no equity in the property. GRANT relief under ¶2. DENY relief under ¶4, ¶7a, ¶9a, ¶10 and ¶11 for lack of cause shown. DENY relief under ¶12b as moot.

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10:00 AM

CONT... Jun Seok Lee Chapter 7

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Jun Seok Lee

Represented By
Young K Chang

Movant(s):

5700 VAN BUREN BLVD., LLC

Represented By
Gary D Fidler

Trustee(s):

Steven M Speier (TR)

Pro Se

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Hearing Room 303

10:00 AM

6:17-15257 Min Joo Choi

Chapter 13

#25.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 611 West 59th Place, Los Angeles, California 90044

MOVANT: CIT BANK, N.A.

CASE DISMISSED 7/11/17

EH__

Docket 7

Tentative Ruling:

July 25, 2017

Service: Proper

Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and 362(d)(4). Court finds bad faith and scheme to delay and hinder based on five prior bankruptcy cases affecting the property and four unauthorized transfers of 5% property interests. GRANT waiver of 4001(a)(3) stay and requests under ¶¶ 3, 4, and 12. GRANT request under ¶ 9. Grant request under ¶10 upon proper recording and notice. DENY request under ¶ 11(a) for lack of cause shown. Request for APO is DENIED as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Min Joo Choi

Pro Se

Movant(s):

CIT Bank, N.A.

Represented By
Dane W Exnowski

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10:00 AM

CONT... Min Joo Choi

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:17-15417 Meghan McConaghy

Chapter 13

#26.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate All Property

MOVANT: MEGHAN MCCONAGHY

EH__

Docket 13

Tentative Ruling:

July 25, 2017

Service: Not Proper

Debtor's prior case was dismissed for failure to file schedules and plan. Debtor alleges attorney negligence. Debtor asserts the filing of schedules and proposed plan is evidence that the present case was filed in good faith.

Movant has failed to properly serve secured creditors pursuant to Fed. R. Bankr. P. 7004 (b)(3), by failing to mail a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized. Movant has also failed to provide evidence of telephonic notice to interested parties.

The Court is inclined to DENY the Motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Meghan McConaghy

Represented By
Nicholas M Wajda

Movant(s):

Meghan McConaghy

Represented By
Nicholas M Wajda

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CONT... Meghan McConaghy

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, July 25, 2017

Hearing Room 303

10:00 AM

6:17-15634 Tracy Marie Roche

Chapter 7

#27.00 Motion for relief from the automatic stay with supporting declarations
UNLAWFUL DETAINER RE: 28821 Pujol St #401 Temecula, CA 92590

MOVANT: FOOTHILLS AT OLD TOWN LLC

EH __

Docket 14

Tentative Ruling:

07/25/2017

Service: Proper

Opposition: None

The Court GRANTS Relief under § 362(d)(1) based on the following: (1) Debtor failed to pay rent, (2) Movant gave appropriate notice to Debtor of its intention to terminate Debtor's tenancy if Debtor did not pay overdue rent, (3) Debtor failed to pay overdue rent, and (4) Movant affirmed its intention to terminate the tenancy by filing a complaint for unlawful detainer. Therefore, "Cause" is established under § 362(d)(1) because Debtor's lease is terminated and the Debtor retains only a possessory interest with regard to the leased property. In re Windmill Farms, Inc., 841 F.2d 1467, 1469-71 (9th Cir. 1988) (Holding that a lease of real property is terminated under California law when the lessor affirms his election to terminate the lease as expressed in a notice to pay rent or quit which the lessor has previously served upon the lessee); See also In re Perl, 513 B.R. 566, 576 (9th Cir. BAP 2014) (Holding that physical occupation of a Residence constitutes a possessory interest under California law that is protected by the automatic stay, making a motion for relief from stay necessary). The Court is also inclined to GRANT relief under § 362(d)(2) as Debtor has no equity in the property and the property is not necessary for an effective reorganization. GRANT relief under ¶¶ 2 and 6.

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10:00 AM

CONT... Tracy Marie Roche

Chapter 7

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Tracy Marie Roche

Pro Se

Movant(s):

Foothills at Old Town, LLC

Represented By
Scott Andrews

Trustee(s):

John P Pringle (TR)

Pro Se

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Hearing Room 303

10:00 AM

6:17-14228 Michelle Meredith

Chapter 7

#27.10 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 5519 Lorelei Avenue, Lakewood, CA

MOVANT: FRANK RISELY AKA FRANK RISELEY

EH__

Docket 37

Tentative Ruling:

July 25, 2017

Service: Not Proper
Opposition: None

Although Movant has obtained a judgment in the state court Unlawful Detainer action, the judgement was obtained post-bankruptcy petition without relief from stay. Relief from stay would not be proper without seeking annulment.

Movant has also failed to properly serve Debtor. Debtor was served on July 18, 2017 via overnight mail. Under the Court's rules, notice must be received five (5) court days prior to the hearing. Movant's notice would only provide for four (4) days prior to the hearing. In addition, Movant failed to give telephonic notice per the Court's self-calendaring instructions.

Based on the foregoing, the Court is inclined to DENY the Motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Michelle Meredith

Represented By
Patricia M Ashcraft

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10:00 AM

CONT... Michelle Meredith

Chapter 7

Movant(s):

Frank Riseley aka Frank Risely

Represented By
Helen G Long

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, July 25, 2017

Hearing Room 303

2:00 PM

6:17-10724 Bausman and Company Incorporated

Chapter 11

#28.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 2/28/17, 4/11/17, 7/18/17

EH__

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bausman and Company Incorporated

Represented By
William A Smelko

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Tuesday, July 25, 2017

Hearing Room 303

2:00 PM

6:16-19993 B & B Family, Incorporated

Chapter 11

#29.00 CONT Approval of Disclosure Statement

From: 5/16/17, 6/20/17

Also #30

EH _____

Docket 89

Tentative Ruling:

07/25/2017

Background

On November 10, 2016 ("Petition Date"), B & B Family, Incorporated ("Debtor") filed a Chapter 11 voluntary petition. The Debtor is owned by Patricia Forte (who owns 50% of shares) and by Randall and Marianne Richey, husband and wife, who own the remaining 50% of shares in the Debtor (collectively, "Shareholders")

Debtor operates Oggi's Pizza and Brewing Company in Apple Valley, California. Debtor has fifty-five employees. The Debtor's Schedules show that it had approximately \$114,662.50 in assets as of the Petition Date. The Debtor's assets consist primarily of leased equipment, business licenses, and liquid assets in the form of cash and accounts.

On March 31, 2017, Debtor filed its Disclosure Statement and Chapter 11 Plan of Reorganization. On May 2, 2017, Comerica Bank filed a Limited Response to the Debtor's Disclosure Statement pointing simply to the Debtor's omission of its franchise agreement as an executory contract being assumed. In response, the Debtor amended its Disclosure Statement and Plan on May 2, 2017 (the "Amended DS and Plan"). Additionally, on May 3, 2017, the Debtor filed redline versions of the Amended DS and Plan reflecting the changes made since the March 31, 2017, filings.

Following the May 2017, hearing on the Disclosure Statement, the Debtor filed amended pleadings on June 13, 2017. Service was proper and no objections to

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2:00 PM

CONT... B & B Family, Incorporated

Chapter 11

the Debtor's Second Amended Disclosure Statement have been filed.

Legal Standards

A. Adequate Information

A Chapter 11 disclosure statement is required to contain "adequate information" pursuant to 11 U.S.C. § 1125(b). Section 1125(f)(2) provides that: "the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28." The United States Courts have devised a disclosure statement template for small businesses, Form B25B, which Debtor generally adopted as to format.

As to the substance of a disclosure statement, 11 U.S.C. § 1125(a)(1) defines "adequate information" 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, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor 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 and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information

The type of information required varies with the circumstances. *See, e.g., In re Jeppson*, 66 B.R. 269, 292 (Bankr. D. Utah 1986) (listing nineteen categories of information commonly required); *see also In re Malek*, 35 B.R. 443, 443-44 (Bankr. E.D. Mich. 1983) (listing minimum requirements).

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CONT... B & B Family, Incorporated

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B. Plan Feasibility

"There are numerous decisions which hold that where a plan is on its face nonconfirmable, as a matter of law, it is appropriate for the court to deny approval of the disclosure statement describing the nonconfirmable plan." *In re Silberkraus*, 253 B.R. 890, 899 (Bankr. C.D. Cal. 2000) (collecting cases).

Disclosure Statement & Plan

The Chapter 11 Plan's proposed effective date is the first day of the first full month after entry of the final order confirming plan (but no earlier than 8/01/17). Classes of claims are categorized as follows:

A. Claims Classification

1) *Administrative Claims:*

- UST Fees - \$4,875 (estimated), in full on effective date
- Turoci Firm - \$40,000 (estimated)/Terms: in full on effective date

2) *Priority Tax Claims:*

- IRS: \$5,251.48/ Terms: in full on effective date
- California BOE: \$125,750.40/Terms: 48 months, 7% interest, \$3,011.25/ mo.

3) *Class 1: Comerica Bank (Impaired)*

- Nature of lien: *first* priority security interest in all of Debtor's assets (D values at \$150,000)

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- Claim: \$494,123.90
- Treatment: Bifurcated claim – Secured claim of \$150,000, Unsecured Claim of \$344,123.90
- Secured Claim Terms: 60 months, 6% interest, \$2,899.92/mo.
- Unsecured Claim treated with Class 6 GUCs

4) Class 2: FC Marketplace aka Pioneer Park (Impaired)

- Nature of lien: *second* priority security interest in all Debtor's assets
- Unsecured claim of \$88,963.76
- Treatment: treated with Class 6 GUCs
- Plan proposes to avoid the lien of FC Marketplace on entry of confirmation order

5) Class 3: Oggi's Corporate (Impaired)

- Nature of lien: *third* priority lien in all Debtor's assets
- Unsecured claim of \$54,106.12
- Treatment: paid with Class 6 GUCs
- Plan proposes to avoid the lien of Oggi's Corporate on entry of confirmation order

6) Class 4: Financial Pacific Leasing

- Secured as to leased restaurant equipment which D values at \$2,000

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- Secured Claim of \$2,000, Treatment: Paid in full on effective date (unimpaired)
- Unsecured Claim of \$42,864.40 (paid with class 6 GUCs) (impaired)
- Plan proposes to avoid the lien of FPL on payment in full.

7) *Class 5: High Desert Prime, LP (Impaired)*

- Landlord
- Debtor is assuming the lease and proposes to cure the arrears owed to landlord
- Claim: \$178,499.98
- Treatment: 48 months, 0% interest (per agreement with HDP), \$3,718.75/mo.

8) *Class 6: General Unsecured Creditors (Impaired)*

- Total Claims: \$636,718.69
- Dividend: 17% or \$120,000
- Treatment: \$1,000/mo. for first 48 months and \$6,000 for months 48-60
- Note: Pawnee lease for bar stools, dishwasher etc., will be rejected and Pawnee filed an unsecured claim and will be treated as such.

9) *Insiders/Equity Holders*

- No Insider Claims
- Equity to retain stock subject to Section VII (which provides potentially for new value of \$10,000)

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B. Plan Funding and Feasibility

Debtor indicates it will have \$60,000 cash on hand as of the Effective Date (\$35,000 cash on hand and \$25,000 to be accumulated between now and Effective date). This amount appears sufficient to cover payments due on the Effective Date.

Disposable income projection is \$6,400 per month based on average net disposable income since December 2016 (and after payments of \$2,204.17 to Comerica and \$3,206.78 to Sysco Foods) for a total of \$11,810.95 for plan payments. This amount appears sufficient to cover the proposed plan payments of approximately \$10,632 per month

C. Management

Patricia Forte (50% owner) is current CEO and will step down as CEO

Randall Richey will remain Secretary

Marianne Richey, current CFO will become CEO and CFO post-confirmation with day-to-day responsibility for overseeing the financial affairs.

D. Other Terms

D will be disbursing agent with no compensation unclaimed distributions to revert to reorganized Debtor.

Executory Contracts

Debtor shall assume the commercial property lease for the restaurant at 19201 Bear Valley Road in Apple Valley and shall assume the Franchise Agreement with Oggie's Corporate.

Debtor shall reject two leases for restaurant equipment.

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Liens

Liens of FC and Oggi's Corporate will be extinguished upon confirmation and liens of Comerica and FPL will be extinguished on payment in full of their allowed secured claims.

Tentative Ruling

The Court has examined the Debtor's Amended DS and Plan to determine whether "adequate information has been provided and has identified the following issues to be addressed:

- The DS and Plan contemplate bifurcation of Comerica and FPL's claims and avoidance of remaining junior liens. A Motion to Value was filed on July 24.
- The Declaration of Marianne Richey makes reference to Exhibit E and purports to authenticate this Exhibit as the "Annual Projected Cash Flow" for the Debtor based on monthly operating reports from December 2016 to April 2017. However, the "Annual Projected Cash Flow" is Exhibit D, not Exhibit E as indicated in the declaration.

There is no need for a further hearing. Once the Debtor has amended the disclosure statement the Debtor may lodge a proposed order approving the disclosure statement, as modified.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

B & B Family, Incorporated

Represented By
Todd L Turoci

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6:16-19993 B & B Family, Incorporated

Chapter 11

#30.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 12/13/16, 3/7/17, 5/30/17

Also #29

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Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

B & B Family, Incorporated

Represented By
Todd L Turoci

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6:17-11053 Rio Rancho Super Mall LLC

Chapter 11

#31.00 Disclosure Statement hearing

Also #32

EH__

Docket 0

Tentative Ruling:

07/25/2017

I. BACKGROUND

Rio Rancho Super Mall, LLC ("Debtor") is a California Limited Liability Corporation. Debtor owns and operates a commercial property, Rio Rancho Super Mall, located at 25211 Sunnymead Blvd., Moreno Valley, CA 92553 ("Property"). The Property is improved with a commercial building (approx. 100,750 sq. ft.) with retail space for 87 retail tenants. On February 13, 2017, Debtor filed a voluntary Chapter 11 Petition. This is the Debtor's second chapter 11 case. The Debtor's prior case was dismissed on December 27, 2016, based on the Debtor's material default in its compliance with the terms of the previously confirmed chapter 11 plan.

Related Documents:

- On June 13, 2017, Debtor filed its Disclosure Statement (Docket #69) and its Chapter 11 Plan of Reorganization (Docket #70).
- On July 10, 2017, creditor Butterfield Valley Partners filed its Objection to Disclosure Statement and Plan (Docket #75).
- On July 11, 2017, creditor DSD Note Investors, LLC filed its Opposition/Objection to the Disclosure Statement (Docket #76).
- On July 11, 2017, creditor Pacific City Bank filed its Objection to the Disclosure Statement (Docket #77) and a Request for Judicial Notice in connection with its Objection (Docket # 78).

Ownership and Management of Debtor:

Debtor has two owners

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1. Eric Sang Yul Kim ("Mr. Kim") is the managing member and owns 87.5%
2. Kwang Sung Kim ("Mrs. Kim"), Debtor's wife, owns the remaining 12.5%

DSD:

Debtor's primary secured creditor is DSD Note Investors, Inc. ("DSD") which the Debtor asserts fully encumbers the Property. On January 31, 2017, DSD filed a complaint for breach of contract and foreclosure and also moved the Superior Court for the appointment of a receiver.

Motivation for filing a Chapter 11:

Debtor contends that the instant filing was precipitated by the dismissal of its prior case due, in part, to poor market conditions which did not sufficiently improve, and due also to problems with the Debtor's confirmed plan which failed to account for certain liens; and also due to the aggressive collection efforts of DSD.

II. DISCUSSION

Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

"Adequate information" means information of a kind, and in sufficient detail, so 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 the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bankr. N.D.Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be

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implemented. *In re Michelson*, 141 B.R. 715, 718-19 (Bankr. E.D.Cal. 1992).

Courts have developed lists of relevant factors for the determination of adequate disclosure. *See, e.g., In re A.C. Williams Co.*, 25 B.R. 173, 176 (Bankr. N.D. Ohio 1982), *In re Ferretti*, 128 B.R. 16, 18–19 (Bankr. D.N.H. 1991), *In re Malek*, 10 C.B.C.2d 189, 35 B.R. 443, 443–44 (Bankr. E.D. Mich. 1983), *In re Metrocraft*, 39 B.R. 567, 568 (Bankr. N.D.Ga. 1984), *In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988), *In re U.S. Brass Corp.*, 194 B.R. 420, 424–25 (Bankr. E.D. Tex. 1996).

This Court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D.Pa. 1982).

PLAN SUMMARY

The Debtor proposes an Effective Date of November 1, 2017

Funding

Debtor intends to fund the plan with regular business income estimated by the Debtor at approximately \$110,920 per month.

Debtor asserts it will have \$45,000 on the Effective Date from rental income and capital contributions

Administrative Claims: (Unimpaired)

Paid in full on Effective Date

· Law Offices of Langley & Chang:	\$25,000
· Clerk's Office:	\$0
· <u>US Trustee Fees:</u>	<u>\$975</u>
Total:	\$25,975

Priority Tax Claims: (Unimpaired)

Paid in full on Effective Date

· CA Franchise Tax Board:	\$800
· <u>IRS</u>	<u>\$2,711.88</u>
Total:	\$3,511.88

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Class 1: DSD Note Investors, LLC (Impaired)

- Principal balance/allowed claim: \$12,000,000
- Claim allowed per stipulation including agreement by DSD to extend loan maturity date
- Terms: \$55,000 per month at 4.25% interest for 35 years
 - Additional quarterly payments of greater of \$10,000 or net cash flow for quarter

Class 2: Riverside County Tax (Unimpaired)

- Principal balance/allowed claim: \$45,000/\$100,000
- Terms: \$1,801.85 per month at 18% interest for 120 months

Class 5: General Unsecured Creditors (Impaired)

- Debtor proposes to pay 0% (i.e. no payments to general unsecured creditors)

Class 6: Equity Interest Holders

- Mr. Kim and Mrs. Kim will retain their interests

Liquidation Value

Debtor estimates its liquidation value is \$7,533,400 and thus after payment of the secured claim of DSD in the amount of \$12,000,000 and even assuming funds are available to pay administrative claims and priority tax claims, no funds would remain for other creditors.

Feasibility

Debtor will fund the plan through regular business income and the cash contribution. Debtor states it will have \$45,000 on effective date to pay \$29,486.88 due on Effective Date.

· Cash on hand:	\$10,000 (DIP Account)
· <u>Capital Contributions:</u>	<u>\$35,000</u>
Total:	\$45,000

Balance remaining after paying initial amount of Effective Date: \$15,513.12

III. OBJECTIONS

All objections were timely filed. The Debtor has filed no replies.

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DSD Objections

1. Inaccurate descriptions of property value, maturity date, and interest rate;
2. DSD asserts FMV of the Property should be 12 million in accordance with terms of the Stipulation and that as to the maturity date, the forbearance is for a period of 36 months, not 35 years;
3. DSD seeks to receive its Note interest rate of 8.625%, not the 4.25% indicated in the DS and Plan;
4. The Debtor's figures for the Riverside County Tax Collector's claim conflicts with the filed proofs of claim (Claim No. 2 and Claim No. 4), and the Stipulation of DSD and Debtor requires that Debtor remain current on property tax payments;
5. DSD asserts that Debtor has not fully disclosed its management/ownership structure and specifically points to its belief that Yeon Ju Kim and John Seung Kyun Lee are also members of the Debtor.

Pacific City Bank Objections

1. PCB contends that the maximum value that DSD can assert as a first priority lienholder is \$10,422,000 and that PCB is in second priority once that cap is reached;
2. PCB further asserts that the DS's estimate of the fair market value of the Property is unsupported by any evidence and belies "basic knowledge of the trajectory of real estate prices in Southern California" considering the fact that in the prior case, Debtor asserted a fair market value of \$8,060,000 (i.e. more than the current asserted value of \$7,500,000) at a time when the real estate values were depressed in the area (PCB Obj. at Ex. A);
3. The proposed plan violates the absolute priority rule in that it allows equity to retain their ownership interests despite the fact that unsecured creditors will receive nothing and equity proposes no new value.

Butterfield Objections

1. The DS indicates at page 13 that the Debtor intends to reject the agreements between Butterfield and the Debtor. Butterfield asserts that these agreements run with the land and are not executory contracts capable of rejection under the

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bankruptcy code and has provided some authority for this proposition. Debtor, for its part has not rebutted Butterfield's contentions;

2. The Debtor's estimated expenses understates the estimated amount of CAM payments which are currently \$9,3000, not \$5,000 as set forth in the Debtor's projections;
3. Butterfield wants additional language added to indicate that any confirmed plan will not alter current or future obligations due under the terms of the CAM;
4. Butterfield also disputes that DSD can assert any claim greater than \$10,422,000;
5. Butterfield objects to the valuation of the Property asserted by the Debtor;

Tentative Ruling:

Debtor's Disclosure Statement and Plan are defective for the following reasons:

1. Debtor's DS indicates in Section IV.A.2.b. that Classes 1 and 3 are impaired. However, Section III.C. indicates that Classes 1 and 5 are impaired. In fact, there appears to be no Class 3 and 4 at all;
2. In Section IV.A.8, Debtor indicates that it seeks cramdown on Classes 1-3 but makes no mention of Class 5, which is impaired, and then contradictorily indicates that it does not intend to cramdown as to Class 1;
3. The DS does not indicate the current tenancy rates of the Property. Additionally, the Debtor should indicate the risks, if any, associated with the proposed increase in rents, and how did the Debtor determine the appropriate percentage increase in rents. The Court notes that in its prior case, the Debtor disclosed that certain tenants were behind on rental payments. The Debtor should disclose whether it has encountered any difficulties in collecting rents and whether any tenants have exhibited a tendency to pay late or to miss payments;
4. The DS and Plan provide no information regarding the avoidance of junior liens and the impact of avoidance on the liabilities of the Debtor;
5. The Court otherwise concurs that the Debtor must fully disclose the

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management/ownership structure of the Debtor and amend its DS and Plan to properly account for properly filed claims, including the claims of the Riverside County Tax Authority noted by DSD;

6. The Court is concerned that the increase in the monthly CAM expense indicates that as proposed the Plan may be infeasible, and otherwise the historical information presented does not support the projected income;
7. The DS asserts that the Debtor will have \$35,000 in "capital contributions" on the Effective Date. Does this figure represent "new value" from the equity interest holders? This is not disclosed.

In addition to the foregoing, the Court agrees with the creditors that many of the objections to language of the DS and Plan revolve around the Debtor's as-yet unfiled motion to value, although creditors will need to place their objections to DSD's claim before the Court. In any event, for the foregoing reasons, the Court's tentative ruling is to DENY approval of the Disclosure Statement as not containing adequate information.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

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6:17-11053 Rio Rancho Super Mall LLC

Chapter 11

#32.00 CONT Order (1) Setting Scheduling Hearing And Case Management
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From: 3/28/17, 5/30/17

Also #31

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Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

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6:15-18887 Manors San Bernardino Ave LLC

Chapter 7

Adv#: 6:16-01148 Pringle v. O. Allen Alpay, Trustee of the Alpay Living Trust

#1.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01148. Complaint by John P. Pringle against Alpay Living Trust, Manors Construction & Development Co., Inc. (21 (Validity, priority or extent of lien or other interest in property)), (91 (Declaratory judgment))

From: 8/31/16, 10/5/16, 10/11/16, 1/11/17, 1/24/17, 2/8/17, 5/10/17 6/21/17

EH__

Docket 1

*** VACATED *** REASON: CASE DISMISSED 7/13/17

Tentative Ruling:

10/05/2016

This matter is being CONTINUED to October 11, 2016, at 3:00 p.m. The parties received telephonic notice of the continuance from the Court.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Manors San Bernardino Ave LLC

Represented By
Gaurav Datta

Defendant(s):

Manors Construction &

Pro Se

O. Allen Alpay, Trustee of the Alpay

Represented By
Stephen B Goldberg
Renee De Golier
John L Bailey

Plaintiff(s):

John P. Pringle

Represented By

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CONT... Manors San Bernardino Ave LLC

Chapter 7

Scott Talkov
Douglas A Plazak

Trustee(s):

John P Pringle (TR)

Represented By
Larry D Simons
Scott Talkov
Frank X Ruggier

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6:16-21223 Kelly Arnold

Chapter 7

Adv#: 6:17-01019 Frealy v. Arnold et al

#2.00 CONT Status Conference RE: Complaint by Todd Frealy against Larry Arnold, Kelly Arnold. (Charge To Estate - \$350.00). Nature of Suit: 14 - Recovery of money/property - other, 11 - Recovery of money/property - 542 turnover of property

From: 4/5/17, 7/19/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/23/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kelly Arnold

Represented By
Todd L Turoci

Defendant(s):

Kelly Arnold

Pro Se

Larry Arnold

Pro Se

Plaintiff(s):

Todd Frealy

Represented By
Carmela Pagay

Trustee(s):

Todd A. Frealy (TR)

Represented By
Carmela Pagay

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6:13-27863 Ronald Leroy Stearns and Alicia Gay Stearns

Chapter 7

#3.00 CONT Motion to Avoid Lien with Capitol One Bank USA NA

From: 5/17/17, 5/31/17, 6/28/17

EH ____

Docket 29

Tentative Ruling:

6/28/17

This matter was continued from May 31, 2017, for Debtor to properly serve Capital One pursuant to Fed. R. Bankr. P. Rule 7004(h). Debtor's proof of service for the amended motion indicates service at:

"Capital One Bank N.A., Attn:63001-0125 Address: 15000 Capital One Drive, Richmond, VA 23238"

The above does not satisfy the standards of Fed. R. Bankr. P. Rule 7004(h).

APPEARANCES REQUIRED.

05/31/2017

BACKGROUND

On October 30, 2013 ("Petition Date"), Ronald and Alicia Stearns (collectively, "Debtors") filed their petition for chapter 7 relief. Among the assets of the estate is real property located at 7573 Honeysuckle Street in Fontana, CA 92336 (the "Property"). The Debtors received a discharge and the case was closed on February 11, 2014.

On January 10, 2017, the Court granted the Debtors' request to reopen the case

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CONT...

Ronald Leroy Stearns and Alicia Gay Stearns

Chapter 7

for the purpose of avoiding judgment liens recorded against the Property. On February 2, 2017, the Debtor filed motions to avoid the liens of Capital One Bank ("Capital One") and Merchants Financial Guardian ("Merchants") pursuant to 11 U.S.C. § 522 (f). At the hearing on the Debtors initial motions, the Court denied both motions due to various technical issues with the motions. The tentative ruling indicated as follows:

The Court is inclined to DENY the motion without prejudice for a variety of technical reasons. Primarily, the filing that is actually set for hearing is Docket No. 17, which is simply a "notice" that does not attach, contain, incorporate, or reference a motion. Second, the earlier motion filed by Debtors, Docket No. 16, contains no admissible evidence regarding the value of the first lien as of the petition date. Third, the Court notes that Local Rule 4003-(2)(b)(1) prevents Debtors from bringing one motion to avoid two lines under 11 U.S.C. § 522(f). Fourth, the earlier motion contains multiple, material factual inconsistencies, including the amount of the claimed exemption and the fair market value of the property.

Tentative Ruling on Motion to Avoid Liens, March 29, 2017.

On April 21, 2017, the Debtors refiled their motions to avoid the liens of Capital One Bank and Merchants. On May 18, 2017, the Debtors withdrew their motion to avoid the lien of Merchants. The only motion currently pending is the motion to avoid the lien of Capital One Bank (the "Motion").

DISCUSSION

As a threshold matter, the Motion was not properly served on Capital One via FRBP 7004(h) which requires service on a FDIC insured entity via certified mail and to the attention of an officer at the address indicated for the institution on the FDIC website. The Debtors did not comply with any of these requirements for service.

Section 522(f)(1)(A) provides in relevant part: "the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled ... if such lien is (A) a judicial lien." 11 U.S.C. § 522(f)(1)(A) (emphasis supplied).

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CONT... Ronald Leroy Stearns and Alicia Gay Stearns

Chapter 7

Section 522(f)(2) prescribes a formula for calculating whether an exemption is impaired:

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

11 U.S.C. § 522(f)(2) (emphasis supplied). That is, an exemption is impaired if the sum of all of liens and the exemption yields a total that is greater than the fair market value of the property. *See In re Meyer*, 373 B.R. 84, 89 (9th Cir. BAP 2007).

Here, the Debtors assert that the first lien on the Property is \$173,433.90, that the Property is next encumbered by the lien of Merchants in the amount of \$48,351.02, and by the lien of Capital One in the amount of \$3,928.15. The Debtors have asserted an exemption in the Property of \$100,000. However, the Debtors Schedule C indicates that they have exempted \$76,566.10 in the Property and have not sought to amend their schedules. Nevertheless, assuming the values are correct, the total of the liens and exemption is \$302,279.17 which is greater than the fair market value of the Property of \$270,000 as asserted by the appraisal obtained by the Debtors. These figures would indicate that the lien of Capital One impairs the exemption of the Debtors.

TENTATIVE RULING

Based on the foregoing, the Court is inclined CONTINUE the hearing on the Motion to June 28, 2017, at 11:00 a.m., for the Debtor to properly serve Capital One per FRBP 7004(h) with an amended Notice of Motion and Motion as indicated above.

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CONT... Ronald Leroy Stearns and Alicia Gay Stearns

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APPEARANCES WAIVED. Movant to file and serve the amended notice of motion and motion.

Party Information

Debtor(s):

Ronald Leroy Stearns

Represented By
John F Mansour

Joint Debtor(s):

Alicia Gay Stearns

Represented By
John F Mansour

Movant(s):

Ronald Leroy Stearns

Represented By
John F Mansour

Trustee(s):

Lynda T. Bui (TR)

Pro Se

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6:16-19150 Charles David Arthur and Claire Bigornia Blanza Arthur Chapter 7

#4.00 CONT Chapter 7 Trustee's Motion for Order: (1) Authorizing the Short Sale of Real Property of the Estate Free and Clear of Liens Pursuant to Bankruptcy Code §§ 363(b) and (f); (2) Approving Payment of Real Estate Commission; & (3) Granting Related Relief

From: 5/17/17, 5/31/17, 7/12/17

EH__

Docket 39

Tentative Ruling:

05/31/2017

BACKGROUND

On October 16, 2016 ("Petition Date"), Charles David Arthur and Claire Blanza Arthur (collectively, "Debtors") filed their petition for chapter 7 relief. Charles Daff is the duly appointed chapter 7 trustee ("Trustee"). Among the assets of the Debtors' bankruptcy estate ("Estate") is real property located at 35965 Carlton Road in Wildomar, CA (the "Property").

On April 25, 2017, the Trustee filed a Motion seeking (1) authority for a short sale of the Estate's right, title, and interest in the Property free and clear of the interests; (2) approving payment of broker commission; and (3) granting related relief ("Motion").

No opposition has been filed.

DISCUSSION

I. Sale of Estate Property Pursuant to Section 363(b)

The trustee, after notice and a hearing, may sell property of the estate. 11

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CONT... Charles David Arthur and Claire Bigornia Blanza Arthur Chapter 7

U.S.C. § 363(b)(1); *see also Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). The sale must be in the best interests of the estate and the price must be fair and reasonable. *In re Canyon Partnership*, 55 B.R. 520 (Bankr. S.D. Cal. 1985); *see also In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991)(sale must have fair/reasonable price, accurate/reasonable notice to creditors and sale made in good faith). The trustee must articulate some "business justification" for selling estate property out of the "ordinary course of business" before the court may approve the transaction. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Ernst Home Ctr., Inc.*, 209 B.R. 974, 979 (Bankr. W.D. Wash. 1997). Objections to sale that are based on inadequacy of price are often resolved the court ordering an auction, which may occur in open court. *Simantrob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 287 (9th Cir. BAP 2005) *citing* Fed. R. Bankr. P. 6004(f).¹

Here, the Trustee asserts that the short sale will result in the estate being paid a fee of approximately \$21,750. The declarations of Karina Jimenez and Anthony Silva (the "Buyers") indicate that the estate will be paid a fee of \$21,750, in addition to the purchase price of \$350,000. However, the Motion is not clear as to what underlies the "fee" being paid. Instead, it appears that the "fee" is actually a part of the purchase price. The framework proposed by the Trustee appears to indicate bad faith because he provides no basis rooted in bankruptcy for the Estate to charge a fee in exchange for the sale of an asset of the Estate.

a) Sale Free and Clear of non-Debtor Interests

A trustee may sell estate property "free and clear" of third party interests in the property, such as co-ownership interest, liens, claims and encumbrances. *See* 11 U.S.C. § 363(f). A sale free and clear of third party interests pursuant to section 363 is authorized only if one of the following conditions is met: (1) sale authorized by applicable nonbankruptcy law; (2) third party whose interest will be affected consents; (3) the affected interest is a lien and the sale price is greater than total value of all liens on the property; (4) the affected interest is a bona fide dispute; or (5) the third party whose interest will be affected could be compelled to accept a money satisfaction of the interest. 11 U.S.C. § 363(f)(1)-(5).

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The Trustee has not obtained consent from the first priority secured lender. Without such consent, the Court cannot grant the Motion free and clear of this lien. As to the remaining junior liens, the Trustee proposes that a hypothetical foreclosure sale situation satisfies Section 363(f)(5). However, the Court believes that the analysis provided in *Dishi & Sons v. Bay Condos LLC*, 510 B.R. 696, 711 (S.D.N.Y. 2014) provides the better view of whether a hypothetical foreclosure sale can be a basis for granting free and clear under 363(f)(5).

[A] narrow interpretation [of 363(f)(5)] provides a limited role for paragraph (5), but avoids rendering the remaining paragraphs mere surplusage. See *In re PW*, 391 B.R. 25, 44 (9th Cir. BAP 2008) ("[A]ny interpretation of paragraph (5) must satisfy the requirement that the various paragraphs of subsection (f) work harmoniously and with little overlap."). Other courts have therefore limited the scope of paragraph (5) to those scenarios where the trustee or debtor, not any third party, is the actor. See, e.g., *In re Ricco, Inc.*, 2014 WL 1329292, *3 (Bankr.N.D.W.Va. Apr. 1, 2014) ("[T]he only logical interpretation of ... § 363(f)(5) is that the statute requires that the trustee or debtor be the party able to compel monetary satisfaction for the interest which is the subject of the sale.") (quoting *In re Haskell*, 321 B.R. at 9); *In re Scott*, 2013 WL 4498987, *2–3 (Bankr.E.D.Ky. Aug. 21, 2013) (paragraph (5) does not refer to foreclosure proceedings because they are initiated by creditors, not the debtor); *In re Haskell*, 321 B.R. at 9 (paragraph (5) does not encompass eminent domain proceedings because the trustee must be the party capable of compelling the interest holder to accept a money satisfaction). **This Court agrees that paragraph (5) should be read to reach only those legal or equitable proceedings that could be brought by the trustee as owner of the property. A foreclosure by a third-party mortgagee is not such a proceeding.** And as Dishi has not suggested any other hypothetical proceedings by which the trustee could compel TGM to accept a money satisfaction in exchange for extinguishment of its interest, the Court holds that paragraph (5) does not authorize a sale free and clear of TGM's rights. *In re Daufuskie Island Props., LLC*, 431 B.R. 626, 637 (Bankr.D.S.C.2010)

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Charles David Arthur and Claire Bigornia Blanza Arthur
(noting that the burden is on the proponent of the sale to identify the basis for the sale).

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Dishi & Sons at 711 (S.D.N.Y. 2014)(emphasis added).

Here, the Court is inclined to agree with the rationale of *Dishi & Sons* that 363 (f)(5) should be read narrowly to encompass only legal or equitable proceedings that could be brought by the trustee as the owner of the property. For this reason, the Court is inclined to deny the Trustee's request to permit a sale free and clear of the junior liens against the Property.

TENTATIVE RULING

Based on the foregoing analysis, the Court is inclined to DENY the Motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Charles David Arthur

Represented By
Anerio V Altman

Joint Debtor(s):

Claire Bigornia Blanza Arthur

Represented By
Anerio V Altman

Movant(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Rika Kido

Trustee(s):

Charles W Daff (TR)

Represented By

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Lynda T Bui

Rika Kido

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6:03-15174 Devore Stop A General Partners

Chapter 7

Adv#: 6:12-01498 Morschauser v. Continental Capital LLC et al

#5.00 Order to Show Cause Why Jesse Bojorquez, American Business Investments, William Morschauser, Stephen Collias and Continental Capital, LLC, Should Not Be Sactioned for Facilitatng Paymentto and/or Receiving Payment for Broker Services in Contravention of this Court's August 11, 2003, Sale Order

Also #6

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Devore Stop

Represented By
Hutchison B Meltzer

Devore Stop A General Partners

Represented By
Arshak Bartoumian - DISBARRED -
Newton W Kellam

Defendant(s):

American Business Investments

Represented By
Lawrence J Kuhlman
Autumn D Spaeth ESQ

Mohammed Abdizadeh

Pro Se

Jesse Bojorquez

Represented By
Lawrence J Kuhlman
Autumn D Spaeth ESQ

Continental Capital LLC

Represented By

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Cara J Hagan

Stephen Collias

Represented By
Cara J Hagan

Plaintiff(s):

William G Morschauser

Represented By
Hutchison B Meltzer
Reid A Winthrop

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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Adv#: 6:12-01498 Morschauser v. Continental Capital LLC et al

#6.00 CONT Status Conference RE: [1] Complaint by William G Morschauser against Continental Capital LLC , Stephen Collias , Jesse Bojorquez , American Business Investments , Mohammed Abdizadeh . (91 (Declaratory judgment)) , (72 (Injunctive relief - other))

HOLDING DATE

From: 3/11/15, 5/20/15, 7/29/15, 12/16/15, 2/3/16, 3/16/16, 5/11/16, 8/31/16, 11/2/16, 11/16/16, 3/8/17, 6/7/17

Also #5

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Devore Stop

Represented By
Hutchison B Meltzer

Devore Stop A General Partners

Represented By
Arshak Bartoumian - DISBARRED -
Newton W Kellam

Defendant(s):

American Business Investments

Represented By
Lawrence J Kuhlman
Autumn D Spaeth ESQ

Mohammed Abdizadeh

Pro Se

Jesse Bojorquez

Represented By

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Lawrence J Kuhlman
Autumn D Spaeth ESQ

Continental Capital LLC

Represented By
Cara J Hagan

Stephen Collias

Represented By
Cara J Hagan

Plaintiff(s):

William G Morschauser

Represented By
Hutchison B Meltzer
Reid A Winthrop

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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6:15-19998 Jack C Pryor

Chapter 7

Adv#: 6:17-01050 United States Trustee for the Central District of v. Pryor

#7.00 Motion to set aside Entry of Default Fed. Rule Civ. Proc. 55(c) made applicable through FRBP 7055

Also #8

EH__

Docket 14

Tentative Ruling:

07/26/2017

Factual Background

On October 13, 2015, Jack C. Pryor ("Defendant") filed a voluntary Chapter 11 bankruptcy, case number 6:15-19998 ("Bankruptcy Case"). The case was subsequently converted to a Chapter 7. Defendant is being represented by Trent Thompson ("Thompson") in the Bankruptcy Case.

In the Bankruptcy Case, the Court ordered Defendant to turn over solar panels to the Trustee ("Turnover Order"). On January 12, 2017, the Court found Defendant was in contempt for violating the Turnover Order.

On February 28, 2017, the United States Trustee ("Plaintiff") filed a Complaint to Deny Discharge ("Complaint") pursuant to 11 U.S.C. §§ 727(a)(2) and (a)(6). Defendant was served with the Complaint on March 9, 2017 and an answer, if any, was due by March 31, 2017. Default was entered against Defendant on April 17, 2017.

Defendant has now filed a Motion to Set Aside the Entry for Default ("Motion"). In support of this Motion, Defendant presents as evidence a declaration from Thompson, who asserts he was not Defendant's counsel at the time the Complaint was filed or when default was entered. Defendant alleges that Thompson acted with excusable neglect. Defendant alleges that he received the Complaint and

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Defendant's wife sent the Complaint to Thompson via e-mail on or about March 1, 2017. Thompson did not review the e-mail and alleges he was not aware of the Complaint until April 27, 2017, when he received another e-mail from Defendant's wife. This Motion was filed on July 3, 2017.

Opposition

On July 12, 2017, Plaintiff filed an opposition ("Opposition") with the Court. Plaintiff alleges Defendant has failed to meet his burden of proof to set aside entry of default. Plaintiff asserts that Defendant intentionally failed to respond to the Complaint and Defendant is attempting to manipulate the Court in order to avoid compliance. Furthermore, Plaintiff contends that Defendant has not raised any grounds which would present evidence of a meritorious defense. Plaintiff asserts that setting aside the entry of default would result in prejudice by allowing Defendant to continue to evade the Turnover Order.

Reply

On July 19, 2017, Defendant filed a reply ("Reply") to Plaintiff's Opposition, including a response to the evidentiary objections. Defendant alleges that Plaintiff's Opposition is erroneous and improper. Defendant asserts that Plaintiff has misinterpreted Thompson's declaration, particularly paragraph 11. Defendant attempts to clarify by stating that the paragraph was meant to convey that there was insufficient time to file this Motion before July and was not a strategic move to intentionally fail to respond to the Complaint. Defendant asserts that there was no decision to intentionally ignore the Complaint and that the necessary requirements for a motion to set aside entry of default have been met.

Discussion

A. Evidentiary Objections

On July 14, 2017, Plaintiff filed seven specific evidentiary objections to

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Thompson's Declaration. Federal Rules of Evidence apply to bankruptcy court, cases, and proceedings. Fed. R. Evid. 1101.

1. Objection 1

Plaintiff objects to Thompson's testimony that, "On or about 3/1/2017, I received an email from Maxine Miller." [Dock. 23 quoting Thompson Dec. ¶4, lines 10-11] as hearsay (Fed. R. Evid. 801), for lack of foundation (Fed. R. Evid. 602), and based on the best evidence rule (Fed. R. Evid. 1003).

The objection is sustained.

2. Objection 2

Plaintiff objects to Thompson's testimony that:

"On or about 04/27/2017, I became aware of the email which had been sent to me on 03/01/2017. On or about 04/27/2017, I received another email from Ms. Miller discussing her proposed Answer to the Adversary Complaint which she had drafted for Jack Pryor."

[Dock. 23 quoting Thompson Dec. ¶6, lines 15-19]. Plaintiff objects to the testimony as hearsay (Fed. R. Evid. 801), for lack of foundation (Fed. R. Evid. 602), and based on the best evidence rule. (Fed. R. Evid. 1003).

This objection is sustained.

3. Objection 3

Plaintiff objects to Thompson's testimony that "The email message stated that Ms. Miller had forgotten a deadline for filing of the proposed Answer to the Adversary complaint, and she claimed that she has missed the deadline 'with so many things going on.'" [Dock. 23 quoting Thompson Dec. ¶7, lines 20-22]. Plaintiff objects to the testimony as hearsay (Fed. R. Evid. 801), for lack of foundation (Fed. R. Evid. 602), and under the best evidence rule (Fed. R. Evid. 1003).

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The Objections are sustained.

4. Objection 4

Plaintiff objects to Thompson's testimony that, "Despite the communication from Ms. Miller, I take full responsibility for failing to timely respond to the Adversary complaint on Jack Pryor's behalf." [Dock. 23 quoting Thompson Dec. ¶8, lines 24-25]. Plaintiff objects to the testimony as hearsay (Fed. R. Evid. 801), for lack of foundation (Fed. R. Evid. 602), best evidence (Fed. R. Evid. 1003), and prejudice (Fed. R. Evid. 403).

This objection is sustained.

5. Objection 5

Plaintiff objects to Thompson's testimony declaring that "The Adversary Complaint was never served upon my office by the U.S. Trustee's Office." [Dock. 23 quoting Thompson Dec. ¶9, lines 1-2]. Plaintiff grounds the objection to the testimony as lacking relevance (Fed. R. Evid. 402).

The objection is sustained.

6. Objection 6

Plaintiff objects to Thompson's testimony asserting that "However, as stated above, I became aware of the Adversary Complaint on or about 04/27/2017." [Dock. 23 quoting Thompson Dec. ¶9, lines 2-3]. Plaintiff objects to the testimony as hearsay (Fed. R. Evid. 801), for lack of foundation (Fed. R. Evid. 602), and pursuant to the best evidence rule (Fed. R. Evid. 1003).

The objection is sustained.

7. Objection 7

Plaintiff objects to Thompson's testimony, declaring:

"I realize that I should have become aware of the Adversary Complaint on or about 3/1/2017, when it was sent to me via email by Maxine Miller. Had I seen the email, I could have

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discussed with Jack Pryor what he wanted me to do."

[Dock. 23 quoting Thompson Dec. ¶10, lines 5-7]. Plaintiff objects to the testimony as being hearsay (Fed. R. Evid. 801), lacking foundation (Fed. R. Evid. 602), best evidence (Fed. R. Evid. 1003), speculation (Fed. R. Evid. 601 & 602), and as an improper opinion (Fed. R. Evid. 701).

The objection is sustained.

B. Motion to Set Aside Entry of Default

An entry of default may be set aside for good cause. Fed. R. Civ. P. 55(c). Fed. R. Civ. P. 55(c) is made applicable to bankruptcy proceedings by Fed. R. Bankr. P. 7055. Fed. R. Bankr. P. 7055. When setting aside an entry of default the court has "especially broad" discretion. *Brady v. U.S.*, 211 F.3d 499, 504 (9th Cir. 2000). However, a case should be decided on the merits whenever possible. *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Good cause can be determined by evaluating three factors (1) whether the defaulting party engaged in culpable conduct leading to the default, (2) whether the defaulting party has failed to present a meritorious defense, or (3) whether the non-defaulting party would be prejudiced by setting aside the default. *U.S. v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010) (citing *Franchise Holding II*, 375 F.3d at 925-926). These factors are in the disjunctive and thus the Court may deny this Motion if any one of the factors is present. *Franchise Holding II, LLC. V. Huntington Rest. Grp. Inc.*, 375 F.3d 922, 926 (9th Cir. 2004) (citing *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000)).

1. Culpable Conduct

Culpable conduct may be found when the defendant has received actual or constructive notice of the complaint and intentionally failed to answer. *Mesle*, 615 F.3d at 1092. Intentional, in this context, means that the defendant had the "intention to take advantage of the opposing party, interfere with judicial decision making, or

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otherwise manipulate the legal process." *Id.* However, when a party is legally sophisticated, intention may be presumed because the party has an understanding of the consequences of its actions. *Id.* at 1093.

Here, Defendant asserts that failure to answer was the result of Thompson's excusable neglect. Defendant's wife e-mailed Thompson the Complaint or about the date it was filed with the Court but Thompson did not see the e-mail. A second e-mail was sent to Thompson in which Defendant's wife attached a proposed answer. Thompson, however, asserts he did not think of himself as Defendant's attorney.

Plaintiff counters that Defendant's conduct was culpable, as it was an attempt to manipulate the bankruptcy system. Plaintiff alleges Defendant and counsel are deliberately creating uncertainty regarding the Debtor's represented status. Plaintiff asserts that Defendant was aware of the consequences of failing to respond. Defendant instead of answering the Complaint chose to contest the Turnover Order in the Bankruptcy Case.

Both Defendant and Thompson assert that there was no agreement between them for representation in this proceeding. It is unclear at what point, if at any, Thompson was retained in this matter. Since no agreement was made between Defendant and Thompson, Thompson's conduct is of no significance given that it was up to Defendant to respond to the Complaint. Thus, the Court will look at the conduct of the Defendant in evaluating whether the Defendant engaged in culpable conduct leading to the entry of default.

The Ninth Circuit has made a distinction regarding culpable conduct between parties who are legally sophisticated and those which are not. A legally sophisticated party can be found when the party has access to outside counsel or "understands the dangers of failing to file an answer." *Lakeview Cheese Co., LLC v. Nelson-Ricks Creamery Co.*, 296 F.R.D 649, 653 (D. Idaho 2013). In *Meadows*, the court found that a foreign entity was "sufficiently sophisticated" to protect its interests, where the party

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had been involved "in other actions in United States courts." *Meadows v. Dominican Republic*, 817 F.2d 517, 522 (9th Cir. 1987). Here, the Court finds Defendant to be a legally sophisticated party. Defendant has been involved in other court actions, has indicated in past proceedings before this Court that he has owned and/or managed more than one business, has filed four bankruptcy cases, and has filed pro per responses in his bankruptcy case (the Court takes judicial notices of responsive pleadings filed by Jack Pryor). At the time Defendant was served with this Complaint, Defendant had counsel representing him in the Bankruptcy Case (Stephen Wade substituted out of the case on May 2, 2017 per Docket No. 260). Furthermore, among other things, Debtor had been previously admonished by this Court for failing to observe deadlines. Pursuant to LBR 2090-1 (a)(3)(A), an attorney in a chapter 7 case "advises the debtor about the possibility of any additional proceedings related to or arising from the underlying bankruptcy case." Defendant thus presumably had access to counsel from Mr. Wade or could have engaged Mr. Thompson at the time the Complaint was filed. Notwithstanding even assuming the Defendant did not receive legal advice regarding the Complaint, the Court finds that as a legally sophisticated party, Defendant's intentional failure to answer can be presumed. *Mesle*, 615 F.3d at 1093.

Even assuming, arguendo, Defendant was not a legally sophisticated party, Defendant's culpable conduct led to the default. Defendant's actions are culpable when "there is no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond." *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d. 691, 698 (9th Cir. 2001). Here, Defendant provides no explanation as to why he failed to respond. Defendant only asserts via inadmissible evidence that his wife sent the Complaint to Thompson (who was not even engaged as counsel at the time), and appears to be attempting to couch the missed deadline in terms of a miscommunication between Thomson and Pryor regarding the scope of representation. However, assuming the Court accepts Defendant's argument, the Motion contains no evidence by the Defendant as to why he specifically did not respond to the Complaint and importantly, no statement by the Defendant as to whether and why he believed Thompson was responsible for representing him in the adversary proceeding.

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Under Fed. R. Bankr. P. 7012, "[i]f a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court. Fed. R. Bankr. P. 7012. The rule is clear Defendant "shall" serve an answer, serving and filing an answer is not an option but rather a requirement. The summons was issued on March

The Court finds that Defendant's culpable conduct led to the default. Therefore, pursuant to *Franchise Holding II*, this alone is a basis to deny the Motion.

2. Meritorious Defense

The meritorious defense factor is not "extraordinarily heavy," but rather requires only that defendant allege sufficient facts that, when taken as true, would create a defense. *Mesle*, 615 F.3d at 1094.

Plaintiff alleges that Defendant's refusal to comply with the Court's Turnover Order requires the court to deny discharge under 11 U.S.C. §727(a)(6). Defendant asserts that he has a meritorious defense in that it was impossible for Defendant to comply with the Turnover Order because the solar panels had been sold, and thus it was not an intentional violation of a court order. Furthermore, Defendant asserts that the Turnover Order did not call for turnover of the sale proceeds.

Plaintiff also alleged in the Complaint that Defendant concealed the sale of property of the estate with the intent to hinder, delay or defraud creditors or an officer of the estate. Therefore, arguing that the Court should deny discharge under 11 U.S.C. §727(a)(2)(B). Plaintiff must show that the Defendant held an actual intent to hinder, delay, or defraud. *In re Devers*, 759 F.2d 751, 753 (9th Cir. 1985). Thus, a meritorious

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defense would include facts demonstrating that Defendant had no actual intent.

Defendant asserts that he has a meritorious defense to this claim. Defendant asserts that he did not believe the solar panels were property of the estate, did not intend to defraud his personal creditors, and only removed the solar panels belonging to Access Solar to pay himself and his wife wages owed to them.

However, as Defendant has not provided any evidence whatsoever (merely allegations) in support of the Motion, the Court finds that Defendant has failed to establish facts that may create a defense as to Plaintiff's claims. As such, this factor supports denying the request to set aside of the entry of default.

3. Prejudice against non-defaulting party

In order for prejudice to bar setting aside an entry of default, the prejudice suffered by the non-defaulting party must be more than a delay of the resolution of the case. *Mesle*, 615 F.3d 1095. "The standard is whether [plaintiff's] ability to pursue his claim will be hindered." *Falk*, 739 F.2d at 463. However, a delay is prejudicial if it would result "in tangible harm such as loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusions." *TCI Grp.*, 244 F.3d. at 701.

Here, Defendant asserts that Plaintiff would not be prejudiced by setting aside the entry of default. However, Plaintiff counters he will suffer prejudice by allowing Defendant to continue to evade the Turnover Order.

Plaintiff's assertion that prejudice would be suffered by allowing Defendant to continue to evade the Turnover Order is not sufficient. To the contrary, the record of the case indicates that the chapter 7 trustee is competently pursuing enforcement of

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Hearing Room 303

2:00 PM

CONT... **Jack C Pryor**
the Court's Turnover Order.

Chapter 7

The Court finds that the non-defaulting party would not suffer prejudice by setting aside the entry of default. However, the *Mesle* test is in the disjunctive.

Tentative Ruling

As set forth above, the Court is inclined to DENY the Motion based on the Defendant's culpable conduct which resulted in the entry of default against him, and because of Debtor's failure to establish a meritorious defense. In particular, the record supports a finding that the Debtor is a legally sophisticated party that knew or should have known that he had a duty to respond to the Complaint. Notwithstanding this knowledge, the Debtor failed to respond. In response, the Debtor has provided largely inadmissible evidence that there a response was contemplated but not effectuated due to a miscommunication regarding the scope of representation of the Debtor by his counsel, Thompson. Similarly, Debtor has failed to present any evidence to support the existence of a meritorious defense.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jack C Pryor

Represented By
Trent Thompson

Defendant(s):

Jack C Pryor

Represented By
Linda J DeVore

Movant(s):

Jack C Pryor

Represented By
Linda J DeVore

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, July 26, 2017

Hearing Room 303

2:00 PM

CONT... Jack C Pryor

Chapter 7

Plaintiff(s):

United States Trustee for the Central

Represented By
Everett L Green

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Brandon J Iskander

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, July 26, 2017

Hearing Room 303

2:00 PM

6:15-19998 Jack C Pryor

Chapter 7

Adv#: 6:17-01050 United States Trustee for the Central District of v. Pryor

#8.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01050. Complaint by United States Trustee for the Central District of California, Region 16 against Jack C Pryor. (Fee Not Required). with adversary cover sheet Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e)))

From: 5/3/17, 7/12/17

Also #7

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jack C Pryor

Represented By
Trent Thompson

Defendant(s):

Jack C Pryor

Represented By
Linda J DeVore

Plaintiff(s):

United States Trustee for the Central

Represented By
Everett L Green

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, July 26, 2017

Hearing Room 303

2:00 PM

CONT...

Jack C Pryor

Brandon J Iskander

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, July 26, 2017

Hearing Room 303

2:00 PM

6:16-11635 Sam Daniel Dason

Chapter 7

Adv#: 6:16-01211 Olivares v. Dason

#9.00 CONT Status Conference Re: Amended Complaint by Juddy Olivares, Eric A Panitz against Sam Daniel Dason; 68- Dischargeability - 523(a)(6) Willful and Malicious Injury

From: 11/2/16, 1/4/17, 3/1/17, 3/8/17, 6/7/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sam Daniel Dason

Represented By
Robert G Uriarte

Defendant(s):

Sam Daniel Dason

Represented By
Robert G Uriarte

Joint Debtor(s):

Greeta Sam Dason

Represented By
Robert G Uriarte

Plaintiff(s):

Juddy Olivares

Represented By
Lazaro E Fernandez

Trustee(s):

Lynda T. Bui (TR)

Represented By
Brett Ramsaur

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, July 26, 2017

Hearing Room 303

2:00 PM

6:16-13311 Jose Antonio Hernandez
Adv#: 6:16-01176 Simons v. Navarro

Chapter 7

#10.00 CONT Status Conference RE: Complaint to Avoid and Recover Fraudulent Transfer

From: 9/7/16, 11/9/16, 1/11/17, 3/8/17, 4/12/17, 5/17/17, 6/7/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Antonio Hernandez

Represented By
Jessica De Anda Leon

Defendant(s):

Carolina Villalobos Navarro

Represented By
Christopher J Langley

Plaintiff(s):

Larry D Simons

Represented By
Frank X Ruggier

Trustee(s):

Larry D Simons (TR)

Represented By
Frank X Ruggier

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, July 26, 2017

Hearing Room 303

2:00 PM

6:16-17389 William Mark Eddington

Chapter 7

Adv#: 6:17-01002 BOSNIAN WAND AIRLINES v. Eddington

#11.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01002. Complaint by BOSNIAN WAND AIRLINES against William Mark Eddington. (d),(e)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud))

From: 3/8/17, 3/22/17, 4/5/17, 7/19/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Mark Eddington

Represented By
Jenny L Doling

Defendant(s):

William Mark Eddington

Represented By
Summer M Shaw

Plaintiff(s):

BOSNIAN WAND AIRLINES

Represented By
John T Van Geffen

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, July 26, 2017

Hearing Room 303

2:00 PM

6:16-17745 Patricia Glenn Apostolakis

Chapter 7

Adv#: 6:16-01286 Apostolakis v. Neiderhiser

#12.00 CONT Motion for Default Judgment

From: 4/26/17, 6/21/17

Also #13

EH _____

Docket 13

***** VACATED *** REASON: Judgment entered 6/28/2017**

Tentative Ruling:

04/26/2017

The Court is inclined to DENY the Motion for Default Judgment as moot based on the Court's granting of the MSA.

Party Information

Debtor(s):

Patricia Glenn Apostolakis

Represented By
Todd L Turoci

Defendant(s):

Patricia Neiderhiser

Represented By
Phillip Myer

Movant(s):

Patricia Apostolakis

Represented By
Todd L Turoci

Plaintiff(s):

Patricia Apostolakis

Represented By
Todd L Turoci

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, July 26, 2017

Hearing Room 303

2:00 PM

CONT... Patricia Glenn Apostolakis

Chapter 7

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, July 26, 2017

Hearing Room 303

2:00 PM

6:16-17745 Patricia Glenn Apostolakis

Chapter 7

Adv#: 6:16-01286 Apostolakis v. Neiderhiser

#13.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01286. Complaint by Patricia Apostolakis against Patricia Neiderhiser. (Fee Not Required). (Attachments: # 1 Adv. Proc. Cover Sheet # 2 Summons) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer))

From: 2/8/17, 3/29/17, 4/26/17, 6/21/17

Also #12

EH__

Docket 1

***** VACATED *** REASON: Judgment entered 6/28/2017**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Glenn Apostolakis

Represented By
Todd L Turoci

Defendant(s):

Patricia Neiderhiser

Represented By
Phillip Myer

Plaintiff(s):

Patricia Apostolakis

Represented By
Todd L Turoci

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:30 PM

6:11-12917 Brad Stoddard and Deborah Ann Stoddard

Chapter 13

#1.00 Motion For Order To Show Cause Why Creditor American Educational Services and Educational Credit Management Corporation Should Not Be Held in Contempt of Court, and For Damages and Attorney's Fees, for Intentionally Violating The Discharge Injunction

EH__

Docket 96

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brad Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Joint Debtor(s):

Deborah Ann Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Movant(s):

Deborah Ann Stoddard

Represented By
Matthew D Resnik
Matthew D Resnik
David Brian Lally
David Brian Lally

Brad Stoddard

Represented By
Matthew D Resnik
Matthew D Resnik
David Brian Lally
David Brian Lally

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:30 PM

CONT... Brad Stoddard and Deborah Ann Stoddard

Chapter 13

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:30 PM

6:11-37296 Robert W Mesa and Mary G Mesa

Chapter 13

#2.00 Application for Compensation for Motion to Modify Plan/Suspend Plan Payments (Fee Application #3) with Proof of Service for Jenny L Doling, Debtor's Attorney, Period: 1/27/2017 to 5/9/2017, Fee: \$750.00, Expenses: \$0.

EH__

Docket 77

Tentative Ruling:

07/27/2017

DISCUSSION

Applicant seeks supplemental fees of \$750, the standard no-look fee for work related to a Motion to Modify filed on January 27, 2017. The Trustee filed comments indicating his disapproval based on the following:

1. The case is in month 68 and payments under the plan have been completed;
2. On May 4, 2017, Trustee filed a Notice of Intent to File a Final Report and Account;
3. On April 21, 2017, Trustee issued the Debtors a refund of excess plan payments in the amount of \$1,016.43;
4. Debtors have filed their Certificate of compliance (completion of plan payments); and
5. Trustee has no funds with which to pay allowed administrative claims.

Applicant requests that the Court approve the fees and permit the fees to be paid outside of the plan prior to the entry of discharge.

TENTATIVE RULING

The Court is inclined to allow the fees.

APPEARANCES REQUIRED.

Party Information

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:30 PM

CONT... Robert W Mesa and Mary G Mesa

Chapter 13

Debtor(s):

Robert W Mesa

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Mary G Mesa

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Mary G Mesa

Represented By
Jenny L Doling
Jenny L Doling
Summer M Shaw
Summer M Shaw

Robert W Mesa

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:30 PM

6:12-15987 James W Smith, Sr. and Cynthia Smith

Chapter 13

#3.00 CONT Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

From: 5/11/17, 7/20/17

Also #4

EH__

Docket 62

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James W Smith Sr.

Represented By
Jenny L Doling

Joint Debtor(s):

Cynthia Smith

Represented By
Jenny L Doling

Movant(s):

Cynthia Smith

Represented By
Jenny L Doling
Jenny L Doling

James W Smith Sr.

Represented By
Jenny L Doling
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:30 PM

6:12-15987 James W Smith, Sr. and Cynthia Smith

Chapter 13

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

From: 5/11/17, 7/20/17

Also #3

EH _____

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James W Smith Sr.

Represented By
Jenny L Doling

Joint Debtor(s):

Cynthia Smith

Represented By
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:30 PM

6:12-15991 Gustavo C Madrigal and Magdaline E M Madrigal

Chapter 13

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

From: 7/20/17

Also #6

EH__

Docket 69

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gustavo C Madrigal

Represented By
Jenny L Doling

Joint Debtor(s):

Magdaline E M Madrigal

Represented By
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:30 PM

6:12-15991 Gustavo C Madrigal and Magdaline E M Madrigal

Chapter 13

#6.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Also #5

EH__

Docket 77

***** VACATED *** REASON: ORDERED ENTERED 7/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gustavo C Madrigal

Represented By
Jenny L Doling

Joint Debtor(s):

Magdaline E M Madrigal

Represented By
Jenny L Doling

Movant(s):

Magdaline E M Madrigal

Represented By
Jenny L Doling

Gustavo C Madrigal

Represented By
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:30 PM

6:12-19824 John Walter Green and Janice Sotto Lopez Green

Chapter 13

#7.00 Motion RE: Objection to Claim Number 5 by Claimant JPMorgan Chase Bank, N.A.

EH__

Docket 72

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
5/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Walter Green

Represented By
Marc A Duxbury

Joint Debtor(s):

Janice Sotto Lopez Green

Represented By
Marc A Duxbury

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:31 PM

6:11-45689 Emilio Aispuro and Luz Angelica Aispuro

Chapter 13

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

From: 2/9/17, 3/9/17, 5/11/17, 7/20/17

EH__

Docket 63

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Emilio Aispuro

Represented By
Clifford Bordeaux

Joint Debtor(s):

Luz Angelica Aispuro

Represented By
Clifford Bordeaux

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, July 27, 2017

Hearing Room 303

12:31 PM

6:12-18567 April S Flores and Gregory P Flores

Chapter 13

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

EH__

Docket 64

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

April S Flores

Represented By
Javier H Castillo

Joint Debtor(s):

Gregory P Flores

Represented By
Javier H Castillo

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:31 PM

6:12-20717 Tang Pham and Kina Pham

Chapter 13

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

EH__

Docket 73

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tang Pham

Represented By
Carey C Pickford

Joint Debtor(s):

Kina Pham

Represented By
Carey C Pickford

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, July 27, 2017

Hearing Room 303

12:31 PM

6:12-20802 Reynaldo Gutierrez and Corinna Delgado-Gutierrez

Chapter 13

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

EH__

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Reynaldo Gutierrez

Represented By
Steven J Diamond

Joint Debtor(s):

Corinna Delgado-Gutierrez

Represented By
Steven J Diamond

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:31 PM

6:12-21671 Ronald Gene Sundvall and Bonnie Lyn Sundvall

Chapter 13

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

EH__

Docket 57

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald Gene Sundvall

Represented By
Hector C Perez

Joint Debtor(s):

Bonnie Lyn Sundvall

Represented By
Hector C Perez

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:31 PM

6:12-22916 Rory P Renish and Karen S Renish

Chapter 13

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

EH__

Docket 69

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rory P Renish

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Karen S Renish

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, July 27, 2017

Hearing Room 303

12:31 PM

6:12-23204 Donald Mark Prather

Chapter 13

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

From: 7/20/17

EH__

Docket 104

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/26/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald Mark Prather

Represented By
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:31 PM

6:12-26787 Veronica Nolasco

Chapter 13

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

EH__

Docket 69

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Veronica Nolasco

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:32 PM

6:17-13285 Jose Carlos Pina

Chapter 13

#16.00 CONT Confirmation of Chapter 13 Plan

From: 6/1/17, 6/22/17

EH __

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Carlos Pina

Represented By
Bryn C Deb

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:32 PM

6:17-13917 Teresa A Salvail and Michael D Salvail

Chapter 13

#17.00 Motion RE: Objection to Claim Number 1 by Claimant Internal Revenue Service

Also #18, 19 & 20

EH__

Docket 32

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/10/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa A Salvail

Represented By
Julie J Villalobos

Joint Debtor(s):

Michael D Salvail

Represented By
Julie J Villalobos

Movant(s):

Michael D Salvail

Represented By
Julie J Villalobos

Teresa A Salvail

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, July 27, 2017

Hearing Room 303

12:32 PM

6:17-13917 Teresa A Salvail and Michael D Salvail

Chapter 13

#18.00 Motion RE: Objection to Claim Number 3 by Claimant Franchise Tax Board

Also #17, 19 & 20

EH__

Docket 33

Tentative Ruling:

07/27/2017

Background:

On May 10, 2017 ("Petition Date"), Teresa and Michael Salvail (collectively, "Debtors") filed for chapter 13 relief. Rod Danielson is the duly appointed chapter 13 trustee ("Trustee").

On June 13, 2017, the California Franchise Tax Board (the "State") filed Claim No. 3-1 ("Claim No. 3") in the amount of \$26,951.45. On June 26, 2017, the Debtors filed their Objection to the State's claim ("Objection"). On July 12, 2017, the State filed its Opposition to the Objection ("Opposition"). The Debtors have filed no reply.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, July 27, 2017

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12:32 PM

CONT... Teresa A Salvail and Michael D Salvail
upon a motion for relief. *Id.*

Chapter 13

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *United States v. Offord Fin., Inc., (In re Medina)*, 205 B.R. 216,222 (9th Cir. BAP 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *Ashford v. Consol. Pioneer Mort. (In re Consol. Pioneer Mort.)*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *Lundell*, 223 F.3d at 1039; *Holm*, 931 F.2d at 623.

Analysis

The Debtors assert that Claim No. 3 must be amended because the unsecured non-priority debt owed to the State was discharged in the Debtors' prior chapter 7 case, in which a discharge was received on May 10, 2017. In response, the State asserts that the underlying debts are for: (1) taxes that are not dischargeable pursuant to 11 U.S.C. § 523(a)(1) as to tax claims for 2012 and 2013 which were filed in 2016; and (2) for penalties which are not dischargeable under 11 U.S.C. § 523(a)(7).

Here, the Court finds that the Debtors failed to provide sufficient evidence to overcome the *prima facie* case that Claim No. 3 is valid at the outset. In particular, the Debtors' bare argument that the State's tax claims were discharged in the Debtor's prior case without any citation to applicable legal authority and with no reference to

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CONT... **Teresa A Salvail and Michael D Salvail**

Chapter 13

any specific aspects of the claims is insufficient to shift the burden back to the State. However, assuming, arguendo, the Debtors had succeeded in shifting the burden, the State has returned with sufficient evidence and legal authority for the Court to find that Claim No. 3 is valid and that the underlying claims were not discharged in the prior case pursuant to §§ 523(a)(1) and 523(a)(7), by a preponderance of the evidence. Moreover, when confronted with the State's evidence and legal authority, the Debtors failed to respond or otherwise to address the State's Opposition.

Tentative Ruling

For the foregoing reasons, the Objection is OVERRULED as to Claim No. 3.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Teresa A Salvail

Represented By
Julie J Villalobos

Joint Debtor(s):

Michael D Salvail

Represented By
Julie J Villalobos

Movant(s):

Michael D Salvail

Represented By
Julie J Villalobos

Teresa A Salvail

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-13917 Teresa A Salvail and Michael D Salvail

Chapter 13

#19.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 2521 Moosedeer Dr Ontario, CA 91761

MOVANT: UNITED CATHOLICS FEDERAL CREDIT UNION

From: 6/20/17, 6/22/17

Also #17, 18 & 20

EH__

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa A Salvail

Represented By
Julie J Villalobos

Joint Debtor(s):

Michael D Salvail

Represented By
Julie J Villalobos

Movant(s):

United Catholics Federal Credit

Represented By
Alana B Anaya

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-13917 Teresa A Salvail and Michael D Salvail

Chapter 13

#20.00 CONT Confirmation of Chapter 13 Plan

From: 6/22/17

Also #17, 18 & 19

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Teresa A Salvail

Represented By
Julie J Villalobos

Joint Debtor(s):

Michael D Salvail

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-13984 Harris Miller

Chapter 13

#21.00 CONT Confirmation of Chapter 13 Plan

From: 6/22/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harris Miller

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14289 Michael Robert Tucker

Chapter 13

#22.00 CONT Confirmation of Chapter 13 Plan

From: 7/6/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Robert Tucker

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14697 Walter Lemus

Chapter 13

#23.00 CONT Confirmation of Chapter 13 Plan

From: 7/13/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Walter Lemus

Represented By
Gary S Saunders

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14790 Ernesto Ayon Lopez and Dolores Millan Sanchez

Chapter 13

#24.00 CONT Confirmation of Chapter 13 Plan

From: 7/13/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ernesto Ayon Lopez

Represented By
James Geoffrey Beirne

Joint Debtor(s):

Dolores Millan Sanchez

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-14868 Lawrence D Leavingston, Sr.

Chapter 13

#25.00 CONT Confirmation of Chapter 13 Plan

From: 7/13/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lawrence D Leavingston Sr.

Represented By
Gilbert A Diaz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14885 Miriam Guadalupe Fricks

Chapter 13

#26.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miriam Guadalupe Fricks

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14887 Maria Fernandez Hurtado

Chapter 13

#27.00 Motion by United States Trustee to Dismiss Case With A Re-filing Bar

CASE DISMISSED 6/30/17

Also #28

EH__

Docket 12

Tentative Ruling:

07/27/2017

BACKGROUND

On June 12, 2017 ("Petition Date"), Maria Hurtado (the "Debtor") filed her petition for chapter 13 relief.

The docket reflects that the Debtor has filed numerous prior cases as follows:

1. Case Number 17-13778, Chapter 13 filed in California Central Bankruptcy on 05/05/2017 , Dismissed for Failure to File Information on 05/23/2017;
2. Case Number 17-10118, Chapter 13 filed in California Central Bankruptcy on 01/06/2017 , Dismissed for Failure to File Information on 01/24/2017;
3. Case Number 14-24995, Chapter 7 filed in California Central Bankruptcy on 12/16/2014, Standard Discharge on 03/30/2015; and
4. Case Number 01-10331, Chapter 7 filed in California Central Bankruptcy on 01/09/2001, Standard Discharge on 06/19/2001.

On June 30, 2017, the Debtor's instant case was dismissed for failure to file information. On the same date, the Office of the United States Trustee ("UST") filed a Motion to Dismiss Chapter 7 Case with a Re-Filing Bar (the "Motion"). No opposition has been filed.

As a threshold matter, the Court notes that the case has already been dismissed. As such the request for dismissal is moot. Nevertheless, the Court shall consider the UST's request for a bar to re-filing pursuant to §§ 349 and 105(a) to

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CONT... **Maria Fernandez Hurtado**

Chapter 13

prevent further abuse of the bankruptcy system.

DISCUSSION

Here, the UST argues that dismissal of the Debtor's case is insufficient because the Debtor is a serial filer who filed three cases in 2017 alone, all of which were dismissed for failure to file documents. Additionally, in the Debtor's instant case she failed to disclose her prior cases in her sworn petition and is ineligible for a chapter 13 discharge due to her having received a chapter 7 discharge on March 30, 2015. Finally, the Debtor's petition indicates that the Debtor's purpose in filing the instant case is only to forestall a foreclosure. Coupled with the Debtor's ineligibility for a discharge under either chapter 7 or 13, the Court finds that the UST has established that the case was filed in bad faith.

Based on the foregoing facts, including a record of noncompliance with the duties of a debtor, the UST has established that a one-year bar under the Court's § 105 and § 349 authority is appropriate.

TENTATIVE RULING

The Court's tentative ruling is to GRANT the request for a one-year re-filing bar. The request to dismiss the case is DENIED as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Maria Fernandez Hurtado	Pro Se
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Trustee(s):

Rod (MH) Danielson (TR)	Pro Se
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6:17-14887 Maria Fernandez Hurtado

Chapter 13

#28.00 Confirmation of Chapter 13 Plan

CASE DISMISSED 6/30/17

Also #27

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Fernandez Hurtado Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

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6:17-14906 Roger James Gardner

Chapter 13

#29.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roger James Gardner

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14907 Rafael Davalos and Rosario B. Davalos

Chapter 13

#30.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rafael Davalos

Represented By
Jenny L Doling

Joint Debtor(s):

Rosario B. Davalos

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14908 Joan Eleanor Demiany

Chapter 13

#31.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joan Eleanor Demiany

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14909 Louis Lee Brown, III and Teri Claudette Brown

Chapter 13

#32.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Louis Lee Brown III

Represented By
Jenny L Doling

Joint Debtor(s):

Teri Claudette Brown

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14923 Gilberto Martinez Villa

Chapter 13

#33.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gilberto Martinez Villa

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15029 Christopher Charles Grosey

Chapter 13

#34.00 Confirmation of Chapter 13 Plan

CASE DISMISSED 7/5/17

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 7/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Charles Grosey

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15032 Ruben Lopez and Jessica Lopez

Chapter 13

#35.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ruben Lopez

Represented By
Terrence Fantauzzi

Joint Debtor(s):

Jessica Lopez

Represented By
Terrence Fantauzzi

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15102 Gwendolyn Washington

Chapter 13

#36.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gwendolyn Washington

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15104 Ida Mary Valencia

Chapter 13

#37.00 Confirmation of Chapter 13 Plan

CASE DISMISSED 7/7/17

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 7/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ida Mary Valencia

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15122 Keith F Keating

Chapter 13

#38.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keith F Keating

Represented By
Sundee M Teeple
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15141 Jose Luis Palos Valenzuela

Chapter 13

#39.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Luis Palos Valenzuela

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15227 John E Neilsen, Sr and Kathy A Neilsen

Chapter 13

#40.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John E Neilsen Sr

Represented By
Julie J Villalobos

Joint Debtor(s):

Kathy A Neilsen

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15245 Romeo C. Torres

Chapter 13

#41.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Romeo C. Torres

Represented By
Ryan A Stubbe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15251 Susan E Duynstee

Chapter 13

#42.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Susan E Duynstee

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

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6:17-15257 Min Joo Choi

Chapter 13

#43.00 Confirmation of Chapter 13 Plan

CASE DISMISSED 7/11/17

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 7/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Min Joo Choi

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-15285 Trevor D. Washington and Sandra Washington

Chapter 13

#44.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Trevor D. Washington

Represented By
Julie J Villalobos

Joint Debtor(s):

Sandra Washington

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:14-23678 Liliana Gomez

Chapter 13

#45.00 CONT Trustee's Motion to Dismiss Case

From: 6/1/17, 6/8/17, 7/13/17

EH__

Docket 92

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/17/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liliana Gomez

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:14-20076 Delfina Ramos Hernandez

Chapter 13

#46.00 Trustee's Motion to Dismiss Case

EH__

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Delfina Ramos Hernandez

Represented By
Edward G Topolski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:15-11540 Jesus Manuel Gomez and Maria Gomez

Chapter 13

#47.00 Trustee's Motion to Dismiss Case

EH__

Docket 71

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus Manuel Gomez

Represented By
Dana Travis

Joint Debtor(s):

Maria Gomez

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
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6:15-21516 Richard John Arceneaux and Nina Marie Arceneaux

Chapter 13

#48.00 Trustee's Motion to Dismiss Case

EH__

Docket 34

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/25/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard John Arceneaux

Represented By
Gregory M Shanfeld

Joint Debtor(s):

Nina Marie Arceneaux

Represented By
Gregory M Shanfeld

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-11794 ROBERT A HAGUE and DIANNE L HAGUE

Chapter 13

#49.00 CONT Trustee's Motion to Dismiss Case

From: 7/20/17

EH__

Docket 64

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ROBERT A HAGUE

Represented By
Manfred Schroer

Joint Debtor(s):

DIANNE L HAGUE

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-18082 Joseph John Vargas and Lydia Vargas

Chapter 13

#50.00 Trustee's Motion to Dismiss Case

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph John Vargas

Represented By
Dana Travis

Joint Debtor(s):

Lydia Vargas

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-18125 Marc Meisenheimer

Chapter 13

#51.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marc Meisenheimer

Represented By
Lionel E Giron

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-18934 Aaron M. Flake and Jeanie M. Flake

Chapter 13

#52.00 Trustee's Motion to Dismiss Case

EH__

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Aaron M. Flake

Represented By
Amanda G Billyard

Joint Debtor(s):

Jeanie M. Flake

Represented By
Amanda G Billyard

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-10469 Joe Nathan Banks

Chapter 13

#53.00 CONT Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

From: 6/22/17, 7/13/17

EH__

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joe Nathan Banks

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-10702 Miriam Louise Preisendanz

Chapter 13

#54.00 CONT Trustee's Motion to Dismiss Case

From: 7/6/17, 7/13/17

EH__

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miriam Louise Preisendanz

Represented By
Danny K Agai

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, July 31, 2017

Hearing Room 303

12:00 PM

6:16-17768 Dispatch Transportation LLC

Chapter 7

#1.00 CONT Motion for 2004 Examination -- Motion of USA Waste of California, Inc. for an Order Authorizing the Examination of Craig Johnson and the Issuance of Subpoenas Duces Tecum to Commodity Trucking Acquisition, LLC and Craig Johnson Pursuant to Fed.R. Bankr.P. 2004

FROM: 5/3/17, 5/17/17, 5/31/17, 6/28/17

Also #2

EH__

Docket 46

Tentative Ruling:

06/28/2017

BACKGROUND

On August 30, 2016 ("Petition Date"), Dispatch Transportation LLC ("Debtor") filed its petition for chapter 7 relief. Charles Daff is the duly appointed chapter 7 trustee ("Trustee").

On April 6, 2017, USA Waste of California, Inc. ("USA Waste") filed its Motion for an Order Authorizing the Examination of Craig Johnson and the Issuance of Subpoenas Duces Tecum to Commodity Trucking Acquisition, LLC ("CTA") and Craig Johnson Pursuant to Fed.R. Bankr.P. 2004 ("Motion"). USA Waste brings its Motion on the basis that it believes that the Debtor's case was filed in bad faith. Specifically, it appears that USA Waste believes the Debtor's asserts were transferred prepetition to CTA so that the Debtor could then file bankruptcy and discharge debts without having to liquidate its assets. In support, USA Waste asserts that CTA is run by the same managers, at the same location, with the same assets, and with representation of the same counsel as the Debtor.

The initially scheduled hearing was continued by stipulation of the parties and was subsequently continued by the Court to June 28, 2017. On May 3, 2017, oppositions to the Motion were filed by CTA and by Craig Johnson. A reply to the

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oppositions was filed on May 24, 2017.

Chapter 7

USA Waste asserts by its Motion that under the broad scope of FRBP 2004, examination of Craig Johnson and subpoena of records in CTA's and Craig Johnson's possession is justified because these parties have access to information that USA Waste requires to evaluate the Debtor's assets, liabilities, and prepetition activities in incurring the liabilities of the estate. (Motion at 3:25-28). Additionally, the initial Motion included a declaration from the Trustee indicating that he waived the Debtor's attorney-client privilege as to communications between the Debtor and Craig Johnson for purposes of the requested examinations. (Daff Decl. ¶3).

In opposition to the Motion, CTA generally asserts that the Motion should be denied because: (1) the Motion is moot because the Trustee retracted the waiver of the Debtor's attorney-client privilege with Mr. Johnson; (2) CTA obtained the Debtor's assets through a "commercially reasonable" Article 9 sale; (3) the Motion is itself only an attempt by USA Waste to obtain privileged information via the bankruptcy process that it could not otherwise obtain and use in connection with currently stayed state court litigation; (4) USA Waste is hoping to obtain privileged information in preparation for the filing of suit against CTA. The Court's Docket reflects that on May 3, 2017, the Trustee filed his Notice of Withdrawal of Waiver of Privilege. (Docket No. 59).

The Manning Pit dispute

In 2004, pursuant to a settlement agreement, the City of Irwindale was bound by a "Prioritization" provision which set forth the rules regarding which city quarries could be filled, when they could be filled, and by whom. In 2004, USA Waste obtained rights to fill a city quarry referred to by the parties as the "Arrow Pit". On or about 2007, the Debtor obtained a contract to fill a separate quarry – the "Manning Pit." A dispute subsequently arose about whether the Debtor's contract and work violated the Prioritization provision.

The Article 9 Sale

CTA alleges that it acquired the Debtor's assets via an Article 9 sale after the Debtor defaulted on debts owed to its first priority secured creditor, Comerica Bank. CTA asserts that Comerica effectuated a foreclosure sale on September 14, 2011 under Michigan law at which CTA was the buyer. CTA purchased the Debtor's assets for \$12 million, which included its equipment, trade names, business names, leases,

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contracts etc. CTA notes that the individuals who shared management or ownership interests in both the Debtor and CTA did so because they made capital contributions for such interests. In support of their assertion that CTA's purchase of the Debtor's assets was proper, CTA and Mr. Johnson point to the decision of the San Bernardino Superior Court in which a different party attempted to bring suit against CTA as an alleged alter ego of the Debtor, and in which the Superior Court found no alter ego liability. This Court, however, notes that the decision of the Superior Court may have no preclusive effect in this case.

The Basis for USA Waste's claim against the Debtor

In 2013, USA Waste commenced a lawsuit against the Debtor for Intentional Interference with Contractual Relations and for Unfair Competition. Discovery was conducted and a motion for summary judgment was filed by the Debtor which was denied by the trial court. The Superior Court scheduled trial for August 2016 but then trailed the trial to September 2016. The instant petition was filed on August 30, 2016 – staying USA Waste's litigation against the Debtor.

DISCUSSION

Bankruptcy Rule 2004 is a broadly construed discovery device which permits any party in interest in a bankruptcy proceeding to move for a court order to examine any entity so long as the examination relates to "acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed.R.Bankr.P. 2004(b). The scope of inquiry permitted under a Rule 2004 examination is generally very broad and can "legitimately be in the nature of a 'fishing expedition.'" *In re Wilcher*, 56 B.R. 428, 433 (Bankr.N.D.Ill.1985). Such an examination, however, cannot be " 'used for purposes of abuse or harassment' and it 'cannot stray into matters which are not relevant to the basic inquiry.'" *In re Table Talk*, 51 B.R. 143, 145 (Bankr.D.Mass.1985) (quoting *In re Mittco, Inc.*, 44 B.R. 35, 36 (Bankr.E.D.Wis.1984)). If the party to be examined makes a motion to quash a Rule 2004 subpoena, the examiner must show that there is good cause for taking the requested discovery. *In re Wilcher*, 56 B.R. at 434.

The Court now turns to its analysis of whether production and examination under Rule 2004 are warranted:

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As to CTA, USA Waste specifically requests production of the following:

Request 1

"... all data storage devices, including hard drives, containing information or documents concerning the Manning Pit, any former assets of the Debtor that were acquired by CTA, and/or the division of CTA referred to as "Dispatch Transportation" by CTA or CTA's agents, employees or managers such as Kim Pugmire."

The Court disagrees with CTA's objection that the requested documents do not relate to the administration of the bankruptcy estate. Specifically, the information regarding the Manning Pit is directly related to USA Waste's claim in the Debtor's bankruptcy. The remaining request appears to concern USA Waste's contention that CTA and the Debtor colluded to shield assets from USA Waste and to prevent it from being able to establish its claim against the Debtor. On this point, based on the evidence in the record, it does not appear that the Superior Court's prior adjudication of the Article 9 sale issues precludes USA Waste from potentially asserting alter ego claims against CTA, and its officers/managers or owners in connection with the Debtor's bankruptcy case for the benefit of the estate's creditors. However, the Court is inclined to limit the request to providing copies of the relevant documents rather than requiring provision of actual devices or hard drives.

As to Craig Johnson, USA Waste requests:

Request 1

All e-mails or other documents (excluding those documents which are part of the public record of proceedings) that you authored, transmitted, or received on behalf of Debtor concerning USA Waste of California, Inc. v. City of Irwindale, et al., Los Angeles Superior Court Case No. KC066276

Request 2

All documents for which Debtor invoked the attorney-client privilege in USA Waste of California, Inc. v. City of Irwindale, et al., Los Angeles Superior Court Case No. KC066276 as reflected in the Privilege Log attached hereto as Exhibit A.

Request 3

All documents concerning the Manning Pit.

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Request 4

All documents concerning the division of CTA referred to as "Dispatch Transportation" by CTA or CTA's agents, employees or managers such as Kim Pugmire.

As to Craig Johnson, the Court is unpersuaded that the Pugmire testimony constitutes a waiver of the attorney-client privilege. *Hernandez v. Tanninen*, 604 F.3d 1095, 1100 (9th Cir. 2010). Disclosing a privileged communication or raising a claim that requires disclosure of a protected communication results in waiver as to all other communications on the same subject. *United States v. Nobles*, 422 U.S. 225, 239-40, 95 S.Ct. 2160, 45 L.Ed.2d 141 (1975); *Weil v. Inv./Indicators, Research & Mgmt.*, 647 F.2d 18, 24 (9th Cir.1981) ("[V]oluntary disclosure of the content of a privileged attorney communication constitutes waiver of the privilege as to all other such communications on the same subject."); *Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th Cir.1992) ("Where a party raises a claim which in fairness requires disclosure of the protected communication, the privilege may be implicitly waived."). The Court, having reviewed Exhibit E of the Pugmire testimony, finds that Mr. Pugmire was asked and frequently responded to general questions regarding who was representing the Debtor as to specific transactions, to which he frequently made reference to Mr. Johnson. However, it is not clear from the general questioning that Mr. Pugmire ever uttered a statement that would specifically waive the attorney-client privileges attached to communications with Mr. Johnson. Moreover, the rule regarding waiver as to disclosed communications is limited to "communications on the same subject." *Nobles* at 439-40. However, here, USA Waste's examination requests are broad and include no limitations as to subject, or otherwise. At a minimum, to prevail USA Waste would need to point to each specific statement in the deposition testimony that it contends effectuates a privilege waiver and separately identify which subject is not protected by the privilege. Having failed to go through this exercise, the Court finds the general references to Mr. Johnson's representation and to Mr. Pugmire's general statements regarding his interactions with Mr. Johnson unpersuasive as a basis to conclude that there has been a waiver of the attorney-client privilege.

Based on the foregoing, the Court finds that USA Waste's Motion must be denied as to all requests made to Mr. Johnson to the extent that the attorney-client

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privilege is asserted, so specifically as to requests 1 and 2. However, the Court agrees that the third and fourth requests generally request information regarding the Manning Pit and CTA's "Dispatch Transportation" division, which appears relevant. Mr. Johnson is free to provide a privilege log in response.

TENTATIVE RULING

The Motion is GRANTED IN PART and DENIED IN PART.

GRANTED (but limited) as to USA Waste's request to CTA for documents related to the Manning Pit, and to documents related to CTA's purchase of the Debtor's assets.

DENIED as to USA Waste's 1st and 2nd requests to Craig Johnson, and GRANTED as to requests 3 and 4.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Dispatch Transportation LLC

Represented By
Leonard M Shulman
Elyza P Eshaghi

Movant(s):

USA Waste of California, Inc.

Represented By
Paul J Laurin

Trustee(s):

Charles W Daff (TR)

Represented By
Toan B Chung

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6:16-17768 Dispatch Transportation LLC

Chapter 7

#2.00 Motion For Order Approving Sale of Estate Property subject to Overbid pursuant to 11 U.S.C Sect 363; Memo of Ps & As; Decl in Support

Also #1

EH__

Docket 82

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dispatch Transportation LLC

Represented By
Leonard M Shulman
Elyza P Eshaghi

Movant(s):

Charles W Daff (TR)

Represented By
Toan B Chung

Trustee(s):

Charles W Daff (TR)

Represented By
Toan B Chung

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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:14-01248 Revere Financial Corporation, a California corpora v. Roger, MD

#3.00 CONT Motion to Dismiss Adversary Proceeding Claims of Plaintiff, Jerry Wang, and to Strike and for a More Definite Statement as to Plaintiff, Revere Financial Corporation
(Holding date)

From: 11/5/14, 12/3/14, 12/15/14, 1/28/15, 4/15/15, 7/22/15, 9/23/15, 1/27/16
6/29/16, 9/28/16, 11/16/16, 2/1/17, 2/16/17, 5/3/17, 6/14/17, 6/28/17

Also #4

EH__

Docket 10

Tentative Ruling:

07/31/2017

BACKGROUND

On October 25, 2013, Douglas Jay Roger ("Debtor") filed his petition for chapter 7 relief. On September 22, 2014, Revere Financial Corporation ("Revere") and Jerry Wang ("Receiver") filed a complaint for determination of the dischargeability of debts pursuant to §§ 523(a)(2)(B), 523(a)(2)(A), 523(a)(4)(A), 523(a)(4) & 523(a)(6); and objecting to the Debtor's discharge pursuant to §§727(a)(3), 727(a)(4)(A), 727(a)(4)(B), 727(a)(5), & 727(a)(7) ("Complaint").

On October 6, 2014, the Debtor filed a Motion to Dismiss, to Strike, and for a More Definite Statement ("Motion"). The operative pleadings are as follows:

1. Memorandum by Jerry Wang in Opposition to Motion (Docket No. 13);
2. Memorandum by Secured Creditor Revere in Opposition to Motion (Docket No. 14);
3. Reply of Debtor to Jerry Wang's Opposition (Docket No. 15);
4. Reply of Debtor to Revere & Jerry Wang's Opposition (Docket No. 16);
5. Debtor's Supplemental Brief (Docket No. 19); and
6. Chapter 7 Trustee's Opposition to Motion (Docket No. 34).

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DISCUSSION

Civil Rule 12(b)(6) standards

Under Civil Rule 12(b)(6), made applicable in adversary proceedings through Rule 7012, a bankruptcy court may dismiss a complaint if it fails to "state a claim upon which relief can be granted." In reviewing a Civil Rule 12(b)(6) motion, the trial court must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). However, the trial court need not accept as true conclusory allegations in a complaint or legal characterizations cast in the form of factual allegations. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); *Hartman v. Gilead Scis., Inc. (In re Gilead Scis. Sec. Litig.)*, 536 F.3d 1049, 1055 (9th Cir. 2008).

To avoid dismissal under Civil Rule 12(b)(6), a plaintiff must aver in the complaint "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955). It is axiomatic that a claim cannot be plausible when it has no legal basis. A dismissal under Civil Rule 12(b)(6) may be based either on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. *Johnson v. Riverside Healthcare Sys.*, 534 F.3d 1116, 1121 (9th Cir.2008).

The Debtor asserts primarily that (1) the Receiver has no "authority" to bring the action; and (2) to the extent that Revere's claim for damages includes fees and expenses incurred by the Receiver in its claim for damages, such claim is not proper because neither the Debtor nor Revere is obligated for the Receiver's fees and expenses. To the extent the Debtor prevails on this second argument, the Debtor also requests that the claim of Revere for fees and expenses incurred by the Receiver be stricken, and that Revere be required to set forth a more definite statement of its damages.

I. The Receiver's "Authority" to Bring the Action Against the Debtor

A. The Receiver Needed Authority from the Appointing Court to bring an Action

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Douglas Jay Roger

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Once a court appoints a receiver, "[i]t is the rule that: 'The functions and powers of a receiver are controlled by statute, by the order appointing him, and by orders subsequently made by the court. He has no powers beyond those so conferred.' *Downtown Sunnyvale Residential LLC v. Wells Fargo Bank, N.A.*, No. H038572, 2015 WL 263727, at *9 (Cal. Ct. App. Jan. 20, 2015) (citing 42 Cal.Jur.2d, Receivers, § 73; and see authority there collected.)" (*Morand v. Superior Court* (1974) 38 Cal.App.3d 347, 351 (*Morand*).) "Where a receiver's powers and duties are not directly prescribed by statute, they are dependent upon the court's order of appointment." (*Nulaid Farmers Assn. v. LaTorre* (1967) 252 Cal.App.2d 788, 791.) A receiver's powers " 'may be expanded or contracted by subsequent court order.' " (*Resolution Trust Corp. v. Bayside Developers* (9th Cir.1994) 43 F.3d 1230, 1242 (*Resolution Trust Corp.*), citing to *Cal-American Income Property Fund VII v. Brown Development Corp.* (1982) 138 Cal.App.3d 268, 273 (*Cal-American*).)

The Debtor cites to Cal. C.C.P. § 568 (CCP 568) and to *Morand* regarding the powers of receivers for the proposition that the Receiver has no authority to bring the instant action. CCP 568 provides, in pertinent part, that

The receiver has, under the control of the Court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the Court may authorize.

The Debtor argues that because the order appointing the Receiver did not enumerate the authority to file lawsuits as a power authorized by the Court, that the Receiver is without such authority until such time as he receives authorization from the Superior Court to file this action. Although authorities are scant, the authorities cited by the Debtor and found by this Court support the conclusion that for the Receiver to institute an action, the order appointing the Receiver must at a minimum contain language generally, if not specifically, authorizing/directing the commencement of actions. *See e.g. Harting v. Cebrian*, 10 Cal. App. 2d 10, 51 P.2d 195 (1935).

The Receiver, for his part, argues that he was directed to manage the receivership estate, including to "take possession, custody, and control" of various

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Chapter 7

assets that comprise the "Receivership Estate" and to "[c]ollect all proceeds of the Receivership Estate, whether equity, income, payments, rents, revenue, sale, or otherwise." (Receiver Opp'n at 2). This language, however, is insufficient for the purpose of authorizing the Receiver to initiate legal actions. *See e.g. Harting v. Cebrian*, 10 Cal. App. 2d 10, 51 P.2d 195 (1935). In support of its position, the Receiver cites *Title Ins. & Tr. Co. v. Grider*, 152 Cal. 746, 94 P. 601 (1908). However, *Grider* dealt with two issues not present in the instant action – first, an attack on the underlying basis for the appointment of a receiver, and second, an assertion that the property at issue was not property that the Receiver was authorized to collect. Neither issue resolves the issue of whether the language of a receivership order authorizes the initiation of an action.

Based on the foregoing, the Court finds that the failure of the Receiver to allege that the receivership order provided him with the authority to initiate actions on behalf of the Receivership Estate is grounds for dismissal.

Although moot, assuming the Receiver did have authority to file the Complaint, as to the Receiver's claim for damages the Receiver has clarified that it does not seek its own fees, expenses, and costs. Instead, it seeks recovery of receivership assets. To the extent the Receiver's claim for damages is limited to recovery of assets of the receivership estate, such damages appear to fall squarely within the bounds of the Order Appointing Receiver. As such, the Receiver would need to amend the Complaint to clarify that its request for damages is limited to recovering assets of the receivership estate.

II. Revere is Not Liable to the Receiver for Fees and Costs and Thus Cannot Seek to Recover Such Fees and Costs as Damages

The Debtor argues that Revere has no basis to include fees and expenses of the Receiver. In response, Revere has cited to authorities indicating that in the event that the receivership estate is insufficient to pay the Receiver's fees and expenses, courts have, in some cases, found third parties liable to the receivers for the deficiency. The Debtor asserts that *Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 374, 28 S. Ct. 406, 410, 52 L. Ed. 528 (1908), is dispositive of this issue.

The Supreme Court, in *Atlantic Trust*, acknowledged that third parties may be

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held liable in certain circumstances but indicated that such cases were rare. The Supreme Court stated, in pertinent part:

It is true that cases are cited in which the party bringing a suit in which a receiver is appointed has been held liable for expenses incurred by the receiver in excess of the proceeds arising from the sale of the property. But in most, if not in all, of those cases, the circumstances were peculiar and were such as to make it right and equitable, in the opinion of the court, that that should be done.

Id. As the Debtor acknowledges, the Supreme Court did not hold that a third party could under no circumstances be liable for a receiver's fees and expenses. Instead, the Debtor asserts only that the specific cases cited by Revere in which a third party was held liable are not applicable to the facts alleged in the instant case. Here, the Debtor does not address the broad language of the Commercial Security Agreement (Complaint at Ex. 3 at 42) in which Revere has pointed to provisions of Debtor's loan documentation, which may provide Revere with a basis to recover for fees and expenses owed to the Receiver for his services. However, notwithstanding this point, the Complaint does not include allegations that the receivership estate will not have funds to fully compensate the Receiver such that Revere could claim any liability for his costs and fees. Nor does the Complaint set forth a claim based on the contractual language cited by Revere in its opposition. As such, the Court finds that the Complaint does not contain sufficient factual allegations to support a plausible claim for damages based on the Receiver's fees and costs.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the Motion as to dismissal of the Receiver, and as to striking Revere's claim for damages to the extent it includes fees and costs owed to the Receiver.

The Motion is DENIED as to its request for dismissal without leave to amend. There has been no showing by Debtor to justify dismissal with prejudice. The Receiver and Revere shall have 60 days from the date of entry of the order on the Motion to amend the Complaint.

Party Information

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Chapter 7

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Douglas J Roger MD

Represented By
Summer M Shaw

Movant(s):

Douglas J Roger MD

Represented By
Summer M Shaw

Plaintiff(s):

A. Cisneros

Represented By
Chad V Haes
D Edward Hays

Jerry Wang

Represented By
Franklin R Fraley Jr
Anthony J Napolitano

Revere Financial Corporation, a

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:14-01248 Revere Financial Corporation, a California corpora v. Roger, MD

#4.00 CONT Status Conference RE: Complaint by Revere Financial Corporation, a California corporation, Jerry Wang against Douglas J Roger MD. false pretenses, false representation, actual fraud, 68 Dischargeability - 523(a)(6), willful and malicious injury, 67 Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 41 Objection / revocation of discharge - 727(c),(d),(e) **(Holding date)**

From: 11/26/14, 1/26/15, 1/28/15, 4/15/15, 7/22/15, 9/23/15, 1/27/16, 6/29/16, 9/28/16, 11/16/16, 2/1/17, 2/16/17, 5/3/17, 6/14/17, 6/28/17

Also #3

EH__

Docket 1

Tentative Ruling:

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Douglas J Roger MD

Represented By
Summer M Shaw

Plaintiff(s):

A. Cisneros

Represented By
Chad V Haes
D Edward Hays

Jerry Wang

Represented By
Franklin R Fraley Jr

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Chapter 7

Revere Financial Corporation, a

Anthony J Napolitano

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

**United States Bankruptcy Court
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Tuesday, August 01, 2017

Hearing Room 303

10:00 AM

6:12-33455 Sergio Reyes and Maria De Los Angeles Reyes

Chapter 13

#1.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 600 N. Hollow Ave., West Covina, CA 91790-1549

MOVANT: WELLS FARGO BANK N.A.

EH__

Docket 51

Tentative Ruling:

08/01/2017

Service: Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1) based on Debtor's failure to make required post-petition payments. GRANT waiver of 4001(a)(3) stay. GRANT relief under ¶2, ¶3, and ¶12. Relief DENIED under ¶13 as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Sergio Reyes

Represented By
Patricia A Mireles

Joint Debtor(s):

Maria De Los Angeles Reyes

Represented By
Patricia A Mireles

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

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CONT... Sergio Reyes and Maria De Los Angeles Reyes

Chapter 13

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, August 01, 2017

Hearing Room 303

10:00 AM

6:12-34376 Sean Paul Crandell and Gina Rosario Crandell

Chapter 13

#2.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 40369 Salem Way, Temecula, California 92591

MOVANT: DITECH FINANCIAL LLC

EH__

Docket 61

***** VACATED *** REASON: ORDER ENTERED 7/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sean Paul Crandell

Represented By
Arnold H Wuhrman

Joint Debtor(s):

Gina Rosario Crandell

Represented By
Arnold H Wuhrman

Movant(s):

Ditech Financial LLC

Represented By
Andrew Kussmaul
James F Lewin
Renee M Parker

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

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Judge Mark Houle, Presiding
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Hearing Room 303

10:00 AM

6:12-34576 William Raymond Gayler and Donna Nan Ling Gayler

Chapter 13

#3.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 6312 Cedar Creek Road, Corona Area, CA 92880

MOVANT: HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR DEUTSCHE ALT-B SECURITIES, MORTGAGE LOAN TRUST, SERIES 2006-AB2

EH__

Docket 94

Tentative Ruling:

August 1, 2017
Service: Proper
Opposition: Yes

Subject to adequate protection discussions, the Court is inclined to GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay. Request under § 13 is DENIED as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

William Raymond Gayler

Represented By
Norma Duenas

Joint Debtor(s):

Donna Nan Ling Gayler

Pro Se

Movant(s):

HSBC Bank USA, National

Represented By
Ryan P Spitalnick

**United States Bankruptcy Court
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10:00 AM

CONT... William Raymond Gayler and Donna Nan Ling Gayler

Chapter 13

April Harriott
Seth Greenhill
Sean C Ferry

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 01, 2017

Hearing Room 303

10:00 AM

6:14-11369 Robert Wayne Cook, Sr. and Kelly Danielle Cook

Chapter 13

#4.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 4990 Padre Ave, Rancho Cucamonga, CA

MOVANT: WELLS FARGO BANK NA

EH__

Docket 114

Tentative Ruling:

08/01/2017

Service: Proper

Opposition: Yes

Movant has established sufficient grounds to support relief from stay under § 362(d) (1) based on Debtor's failure to make required post-petition payments. Debtor alleges that more payments have been made to the Movant than the Motion accounts for and that some payments have been misapplied by the Movant, but provides no specificity or detail to support his assertions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Robert Wayne Cook Sr.

Represented By
Steven A Alpert

Joint Debtor(s):

Kelly Danielle Cook

Represented By
Steven A Alpert

Movant(s):

Wells Fargo Bank, N.A. .

Represented By
Dane W Exnowski

**United States Bankruptcy Court
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Tuesday, August 01, 2017

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10:00 AM

CONT... Robert Wayne Cook, Sr. and Kelly Danielle Cook

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 01, 2017

Hearing Room 303

10:00 AM

6:15-10276 Mario Eduardo Rojo and Lourdes Rojo

Chapter 13

#5.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 5524 Kingsley Street, Montclair, CA 91763

MOVANT: FCI LENDER SERVICES, INC.

From: 7/25/17

EH__

Docket 48

***** VACATED *** REASON: ORDER ENTERED 7/31/17**

Tentative Ruling:

07/25/2017

Service: Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1) based on Debtor's failure to make required postpetition payments. DENY relief under § 362(d)(2) based on Debtor's lack of equity in the property because Movant failed to fill in the required information in ¶11(h) of the Real Property Declaration from Debtor's attached schedules. GRANT relief under ¶2 and ¶3. GRANT waiver of 4001(a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Mario Eduardo Rojo

Represented By
Phillip Myer

Joint Debtor(s):

Lourdes Rojo

Represented By
Phillip Myer

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10:00 AM

CONT... Mario Eduardo Rojo and Lourdes Rojo

Chapter 13

Movant(s):

FCI Lender Services, Inc., servicing

Represented By
Edward G Schloss

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:16-18319 YBF Tax, Inc.

Chapter 7

#6.00 CONT Motion for relief from automatic stay with supporting declarations
ACTION IN NON-BANKRUPTCY FORUM RE: Rosa Bryant v YBF Tax Inc et al;
CIV DS1504314; Pending: Superior Court of CA San Bernardino Court

MOVANT: ROSA BRYANT

From: 5/30/17

EH__

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

YBF Tax, Inc.

Represented By
Ronald W Ask

Movant(s):

Rosa Bryant

Represented By
Michael F Chekian

Trustee(s):

Karl T Anderson (TR)

Represented By
Lovee D Sarenas

**United States Bankruptcy Court
Central District of California
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Tuesday, August 01, 2017

Hearing Room 303

10:00 AM

6:17-13836 Hermelinda Diaz

Chapter 13

#7.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Re: 3865 VERMONT ST, SAN BERNARDINO, CA 92407

MOVANT: WELLS FARGO BANK, N.A.

CASE DISMISSED 5/26/17

From: 6/27/17, 7/11/17

EH__

Docket 12

Tentative Ruling:

07/11/2017

Service: Improper

Opposition: None

Once improper service is remedied, the tentative ruling is to GRANT relief from the stay under §§ 362(d)(1) and 362(d)(4) based on the following: Debtor has not paid mortgage for over two years, Movant is one of two creditors listed in case commencement documents, Debtor filed only a few case commencement documents and schedules, and the statement of financial affairs have not been filed. Additionally, the Debtor's failure to file required documents resulted in dismissal of the case on May 26, 2017. Debtor has also filed two previous bankruptcies with respect to the property in 2016 which were dismissed. Based on the foregoing, the Court is inclined to GRANT relief pursuant to ¶2, ¶5, ¶7b, and ¶9b. Court is also inclined to GRANT relief that Movant may provide and enter into potential forbearance agreement; confirming that no stay is in effect pursuant to § 362(c)(4). GRANT waiver of 4001(a) (3) stay.

As reflected above, while the court is inclined to grant relief from stay, service was improper due to Movant's failure to serve Debtor. Specifically, the Debtor's address

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CONT... Hermelinda Diaz Chapter 13

of record is 3865 Vermont St., San Bernardino, CA 92407, however, Movant served the Debtor at 865 Vermont St., San Bernardino, CA 92407. Based on the foregoing, the hearing will be continued to August 1, 2017, at 10:00 a.m.

APPEARANCES WAIVED. Movant to file and serve an amended Notice of Motion and Motion on the Debtor at the correct address no later than July 12, 2017.

Party Information

Debtor(s):

Hermelinda Diaz	Pro Se
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Movant(s):

WELLS FARGO BANK, N.A.	Represented By Jason C Kolbe
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Trustee(s):

Rod (MH) Danielson (TR)	Pro Se
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10:00 AM

6:17-14610 Kerry Neville Morgan and April Bathsheba Bethea-Morgan Chapter 7

#8.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2012 Hyundai Sonata VIN: 5NPEB4AC5CH408906

MOVANT: AMERICREDIT FINANCIAL SERVICES, INC.

EH__

Docket 10

Tentative Ruling:

August 1, 2017
Service is Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1) based on a lack of equity cushion.
GRANT relief from stay under § 362 (d)(2) based on lack of equity. GRANT waiver of 4001(a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Kerry Neville Morgan

Represented By
Richard Komisars III

Joint Debtor(s):

April Bathsheba Bethea-Morgan

Represented By
Richard Komisars III

Movant(s):

AmeriCredit Financial Services, Inc.

Represented By
Mandy D Youngblood

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10:00 AM

**CONT... Kerry Neville Morgan and April Bathsheba Bethea-Morgan
Sheryl K Ith**

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, August 01, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#9.00 CONT U.S. Trustee Motion to dismiss or convert Chapter 11 Case

From: 6/27/17, 7/11/17

EH__

Docket 266

***** VACATED *** REASON: CONTINUED TO 8/22/17 AT 2:00 P.M.**

Tentative Ruling:

7/11/17

BACKGROUND

On May 11, 2016, Debtor filed a Chapter 11 voluntary petition. Debtor operated a medical account receivable collection service. On November 30, 2016, a Chapter 11 trustee was appointed.

On June 2, 2017, UST filed a motion to dismiss the Chapter 11 case for failure to pay quarterly fees of either \$9,750 or \$6,825, which were delinquent as of May 1, 2017. On June 13, 2017, the Chapter 11 trustee filed opposition to the motion to dismiss.

DISCUSSION

11 U.S.C. § 1112(b) provides that a case may be dismissed or converted for cause. Section 1112(b)(4) enumerates certain examples of cause, including "failure to pay any fees or charges required under chapter 123 of title 28." 28 USC § 1930(a)(6) imposed the statutory fees for Chapter 11 cases. Therefore, cause exists to convert the

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CONT... **Allied Injury Management, Inc.**
case when Chapter 11 quarterly fees are not paid.

Chapter 11

The Chapter 11 trustee states, however, that \$6,000 of the past due fees were paid on June 12, 2017, and that the Chapter 11 trustee will pay the remaining balance.

TENTATIVE RULING

Chapter 11 trustee to inform the Court whether the Chapter 11 quarterly fees have been paid in full.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

United States Trustee (RS)

Represented By
Michael J Bujold
Abram Feuerstein esq
Everett L Green
Mohammad Tehrani

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

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Hearing Room 303

2:00 PM

6:17-13853 Malik Muhammad Asif and Zobia Asif

Chapter 7

#10.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 3660 Grand Avenue, Suite A, Chino Hills, CA 91709

MOVANT: ROIC CALIFORNIA LLC

From: 7/11/17

EH__

Docket 60

Tentative Ruling:

7/11/17

The Court is inclined to GRANT relief pursuant to § 362(d)(1). GRANT requests under ¶¶ 2 and 6. GRANT request under ¶9 upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law. DENY requests under ¶ 3 and 7 for lack of cause shown. DENY alternative request for adequate protection as moot.

The case was converted to Chapter 7 after the motion was filed, however, so the hearing will need to be continued for service on Chapter 7 trustee.

APPERANCES REQUIRED.

Party Information

Debtor(s):

Malik Muhammad Asif

Represented By

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2:00 PM

CONT... Malik Muhammad Asif and Zobia Asif

Chapter 7

Todd L Turoci

Joint Debtor(s):

Zobia Asif

Represented By
Todd L Turoci

Movant(s):

ROIC California, LLC

Represented By
Robert C Thorn

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:17-13307 Linda E Long

Chapter 7

#1.00 CONT Pro se Reaffirmation Agreement Between Debtor and BALBOA THRIFT & LOAN re 2012 Nissan Versa SV Sedan

From: 7/12/17

EH__

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Linda E Long

Pro Se

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

#2.00 CONT Motion to Approve Compromise Under Rule 9019 Filed Jointly by Chapter 7 Trustee and Revere Financial Corporation to Approve Settlement Contract Between Chapter 7 Trustee and Revere Financial Corporation

From: 3/1/17, 5/3/17, 6/14/17, 6/28/17

Also #3,4,5 & 6

EH__

Docket 440

Tentative Ruling:

6/28/17

See tentative for matter #10.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

#3.00 CONT Motion for Approval of Compromise Between Trustee and OIC Medical Corporation, Liberty Orthopedic Corporation, and Universal Orthopaedic Group

From: 6/28/17

Also #2,4,5 & 6

EH__

Docket 318

Tentative Ruling:

06/28/2017

PROCEDURAL BACKGROUND

On October 20, 2013, Douglas Jay Roger, MD, Inc., ("Debtor") filed a Chapter 7 voluntary petition. On October 20, 2015, Trustee filed two complaints. The first complaint ("First Complaint") named OIC Medical Corp. ("OIC"), Liberty Orthopedic Corp. ("LOC"), and University Orthopaedic Group ("UOG") as defendants, and was for avoidance, recovery, and preservation of preferential and fraudulent transfers. The second complaint ("Second Complaint") named Douglas J. Roger, M.D., Inc. Defined Benefit Plan ("DJRI Benefit Plan") (OIC, LOC, UOG, and DJRI Benefit Plan, collectively, "Defendants") as defendant, and also was for avoidance, recovery, and preservation of preferential transfers.

On April 6, 2016, the Trustee filed two motions to approve compromise (collectively, the "Original Compromise Motions"), corresponding to the two complaints identified above. On April 18, 2016, Kajan Mather & Barish ("KMB") filed oppositions to the motions for compromise. On April 25, 2016, Revere Financial Corporation ("Revere") filed objections to the motions for compromise, joining the opposition of KMB. On May 4, 2016, Trustee filed replies to KMB's oppositions and Revere's objections. On May 9, 2016, KMB withdrew its opposition.

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CONT... Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

On May 11, 2016, a hearing was held on the matter, however, based on the representations of the parties, the hearing was continued. On May 25, 2016, Defendants filed joinders in the motions for compromise. The hearing was repeatedly continued to allow for discussions between Trustee and Revere.

On November 5, 2016, Defendants filed motions to enforce their respective settlement agreements with Trustee (collectively, the "Enforcement Motions"). Nevertheless, the Original Compromise Motions and the Enforcement Motions were again continued by stipulation.

On January 18, 2017, Revere filed oppositions to the motions to enforce, and Trustee joined in the oppositions. On January 19, 2017, KMB filed joinders to the motions to enforce.

On January 31, 2017, Revere and Trustee filed a joint motion to approve a settlement between Trustee and Revere (the "New Compromise Motion"). On February 1, 2017, hearings were held on the Original Compromise Motions and the Enforcement Motions. In light of the New Compromise Motion, the Court continued the matter.

On February 14, 2017, Bank of Southern California, N.A. ("BSC") filed an objection to the New Compromise Motion. On June 14, 2017, Defendants and KMB filed separate oppositions to the New Compromise Motion. On June 21, 2017, Revere filed a reply in support of the New Compromise Motion.

FACTUAL BACKGROUND

There are two distinct settlement motions under consideration: (1) the New Compromise Motion; and (2) the Original Compromise Motions (and the corresponding Enforcement Motions).

A. New Compromise Motions

The New Compromise Motion¹ creates four categories of assets: (1) cash held by Trustee and in which Revere claims a security interest; (2) cash currently held by Revere, previously distributed by Trustee; (3) tax refunds; and (4) claims. Revere proposes to grant a carve-out of 100 percent of category one (\$183,480.95) and

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CONT... Douglas J Roger, MD, Inc., A Professional Corporat Chapter 7

\$43,493 in category two, totaling \$226,973.95, in addition to a carve out of any tax refunds.

In return, the settlement agreement provides that Trustee will agree to allow Revere a claim of \$5,500,000.00, of which \$4,000,000.00 will be treated as secured. Trustee also waives the right to challenge the validity or priority of Revere's security interest, and abandons any remaining interest in Revere's collateral. Revere is also granted the right to prosecute all claims owned by the bankruptcy estate that are not prosecuted by the Trustee or the contemplated liquidating trustee, and Revere is granted relief from stay to prosecute all such actions.

The settlement agreement contemplates the creation of a liquidating trust. As part of the creation of such a trust, the Trustee is to withdraw from all pending settlements for avoidance actions. Revere (or its nominee) will act as trustee of the liquidating trust. The rights to pursue Debtor's causes of action will be assigned to the liquidating trust, and Revere will have full discretion to determine which claims to pursue. Revere will cover the costs incurred by the liquidating trust. With some caveats, any proceeds recovered by the liquidating trust will be split 75/25 between Revere and the bankruptcy estate.

The settlement agreement also contains a clause that it is voidable if it not approved as is.

B. Original Compromise Motions

The Original Compromise Motions consist of two separate compromises: (1) a compromise with OIC, LOC, and UOG; and (2) a compromise with DJRI Benefit Plan. The first compromise contemplated Trustee dismissing adversary proceeding 6:15-1307 in return for \$30,000. The second compromise contemplated Trustee dismissing adversary proceeding 6:15-1309 in return for \$50,000.

DISCUSSION

I. Legal Standard for Approving Compromise

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CONT... **Douglas J Roger, MD, Inc., A Professional Corporat** Chapter 7

Rule 9019(a) authorizes the bankruptcy court to approve a compromise or settlement on the trustee's motion and after notice and a hearing. The bankruptcy court must consider all "factors relevant to a full and fair assessment of the wisdom of the proposed compromise." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424, 88 S. Ct. 1157, 20 L. Ed. 2d 1 (1968). In other words, the bankruptcy court must find that the settlement is "fair and equitable" in order to approve it. *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986).

In conducting this inquiry, the bankruptcy court must consider the following factors:

(a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id.

The bankruptcy court enjoys broad discretion in approving a compromise because it "is uniquely situated to consider the equities and reasonableness [of it]" *United States v. Alaska Nat'l Bank (In re Walsh Construction, Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). As stated in *A & C Props.*:

The purpose of a compromise agreement is to allow the trustee and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims. The law favors compromise and not litigation for its own sake, and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision must be affirmed.

Id. (citations omitted).

On the other hand, even though the bankruptcy court has wide latitude in approving compromises, its discretion is not completely unfettered. See *Woodson v. Fireman's*

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CONT... Douglas J Roger, MD, Inc., A Professional Corporat Chapter 7

Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988). The trustee bears the burden of proving to the bankruptcy court that the settlement is fair and equitable and should be approved. *In re A&C Props.*, 784 F.2d at 1382.

The Court shall first apply the *A&C* factors to the Original Compromise Motion in isolation.

A. The OIC, LOC, and UOG Compromise

1. The Probability of Success in the Underlying Litigation

The record is neutral as to the probability of success. In particular, the Trustee has identified the arguments being made by OIC, LOC and UOG in defense of the avoidance actions but has provided scant information with which to gauge the strength of the respective positions. This factor is neutral.

2. Difficulty of Collection

The Trustee's Supplemental Declaration provides strong evidence underscoring the potential difficulty in collecting from OIC or LOC. In particular, the Trustee has determined that these entities are no longer going concerns and have no assets. This factor favors settlement.

3. Complexity, Cost, Inconvenience and Delay of Litigation

The difficulty in collection against OIC and LOC leaves UOG as the primary means for collection of any judgment. The action against UOG would require the Trustee to establish successor/alter ego liability. The Trustee concedes, however, that there is no evidence showing that any assets or customers were transferred to UOG from OIC, and UOG has indicated it acquired its contracts through a professional service. Further, the Trustee indicated that many of the transfers originally alleged to have been recoverable are either duplicative, were paid out on behalf of the Debtor by OIC, or were not paid by the Debtor to OIC at all, such that the remaining amount of the approximately \$1.1 million is approximately \$600,000. Based on this information, the Trustee has demonstrated that the complexity and costs of litigation weigh in favor of settlement.

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Chapter 7

4. Interest of Creditors

Based on the Trustee's representation that the cost of litigation is likely to exceed any additional benefit to the Estate, the Trustee has established that settlement is in the best interests of creditors. This factor weighs in favor of settlement.

B. The DJRI Benefit Plan Compromise

1. The Probability of Success in the Underlying Litigation

The Trustee has provided evidence that success was predicated on a showing that DJRI Benefit Plan was an insider of the Debtor, and that DJRI Benefit Plan raised credible arguments to contest such a showing. This factor weighs in favor of settlement.

2. Difficulty of Collection

There are no specifics provided to indicate that collection would be particularly difficult. This factor is neutral.

3. Complexity, Cost, Inconvenience and Delay of Litigation

There is insufficient information provided to indicate that the litigation would be more complex, costly or inconvenient than what is customary. This factor is neutral.

4. Interest of Creditors

Based on the Trustee's representation that DJRI Benefit Plan possesses strong arguments diminishing the probability of success for the Trustee, coupled with the certainty of the Estate receiving \$50,000 for the benefit of the estate through this settlement, the settlement appears to be fair and equitable. This factor weighs in favor of settlement.

II. Motions to Enforce & the New Compromise

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CONT... Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Defendants filed motions to enforce the settlement and requested that the court grant the motions to compromise. Defendants contend that the settlement agreement constitutes a valid contract, that the contract is valid unless the court rejects it, and that Revere's involvement in the proceedings is for the purpose of harassment and to increase attorney's fees. Revere responded by contending that the settlement agreement does not constitute a valid contract, that Trustee can sell the adversary, and that Trustee has a duty to consider higher bids. Additionally, Revere has essentially offered its own bid by filing the New Compromise Motion.

Regarding, Revere's contention that Trustee has the ability to sell or assign an avoidance action to a creditor, the Courts findings that *In re P.R.T.C., Inc.*, 177 F.3d 774, 781 (9th Cir. 1999) and *In re Prof'l Inv. Props. of Am.*, 955 F.2d 623, 625 (9th Cir. 1992) support Revere's contention that the avoidance actions can be assigned. The limitations arguably imposed by these line of cases, that the assignment(s) occur pursuant to a plan of reorganization, or when a creditor is pursuing interests common to all creditors, does not bar assignment of the avoidance actions at issue, since the recovery of preferential or fraudulent transfers is an interest common to all creditors.

While Defendants raise a variety of arguments against the New Compromise Motion in their opposition, there is no contention that Trustee lacks the legal authority to transfer the avoidance action.

KMB has objected that the proposed assignment is legally prohibited, but its argument is largely inaccurate. Citing *In re Lahjani*, 325 B.R. 282, 285 (B.A.P. 9th Cir. 2005), KMB asserts that there are three requirements for such a sale, and then argues that two of those requirements have not been met. First, KMB argues that the sale must be for a sum certain. While KMB allots one page to a subsection on this argument, there is no authority justifying the assertion. While *Lahjani* stated that "trustee avoiding powers may be transferred for a sum certain," it did not impose such a requirement, and the case it cited with regards to the statement, *In re P.R.T.C., Inc.*, 177 F.3d 781-82, did not mention such a requirement. *Id.* Therefore, the Court declines to read this statement by *Lahjani* as imposing a requirement. Likewise, KMB argues that that the assignment must benefit the entire estate. While it is true that such an assignment must benefit the estate, this argument does not assist the Court's analysis since if there is no benefit to the estate, the New Compromise Motion will clearly not be considered

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CONT... Douglas J Roger, MD, Inc., A Professional Corporat
an "overbid."

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A more novel and complex issue is presented by the process that has led to the proposed assignment of the avoidance actions. Specifically, Trustee entered into a settlement with Defendants that would have resolved the actions, Defendants moved to enforce the actions, then Trustee entered into a second settlement, this time with Revere. To complicate matters further, the second settlement is much more expansive in the rights it affects.

First, as is noted by Defendants, the Court must approve the compromise of a claim before the agreement becomes enforceable. *See* Fed. R. Bankr. P. Rule 9019. Nevertheless, there is case law that concludes Trustee does not have authority to unilaterally repudiate the settlement agreement. *See, e.g., In re Seminole Walls & Ceilings Corp.* 388 B.R. 386, 391-96 (Bankr. M.D. Fla. 2008) ("To the extent there is a split of authority, the Court finds the better-reasoned view is that the parties to a settlement agreement may not unilaterally repudiate it after approval of it has been sought pursuant to Rule 9019.") (collecting cases). The fact that Trustee cannot repudiate the settlement agreement does not mean that the Trustee must continue to actively support the agreement. *See, e.g., In re Martin* 91 F.3d 389, 394 (3rd Cir. 1996) ("The trustee may even opt not to argue in favor of the stipulation, as was done here, if she no longer believes the settlement to be in the best interest of the estate."). But the Court, nevertheless, has the authority to approve the settlement agreement over a trustee's objection. *See id.* ("The trustee does not breach any term of the stipulation by [not supporting the agreement], for the bankruptcy court may nonetheless approve the settlement.").

As argued by Revere, however, the Court must consider preferable alternative offers, despite the Original Compromise Motions. Revere primarily cites to *In re Mickey Thompson Entm't Group*, a case which stated:

We agree with the Third Circuit that the disposition by way of 'compromise' of a claim that is an asset of the estate is the equivalent of a sale of the intangible property represented by the claim, which transaction simultaneously implicates the 'sale' provisions under section 363 as implemented by Rule 6004 and the 'compromise procedure of Rule 9019(a).

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292 B.R. 415, 421 (B.A.P. 9th Cir. 2003). By analogizing the Original Compromise Motions to sale motions, Revere is arguing that the proposed compromise be compared to other bids, instead of merely being compared to continuation of the underlying litigation. *See, e.g., id.* at 421-22 ("When confronted with a motion to approve a settlement under Rule 9019(a), a bankruptcy court is obliged to consider, as part of the 'fair and equitable' analysis, whether any property of the estate that would be disposed of in connection with the settlement might draw a higher price through a competitive process and be the proper subject of a section 363 sale. . . . The possibility that someone else may be willing to pay a higher price triggers the prospect of an auction that could yield an even higher price."). Nevertheless, the Court must be able to ascertain that the New Compromise Motion offered by Revere actually constitutes an overbid.

III. Comparison of the Original Compromise & the New Compromise

The majority of the briefing has, directly or indirectly, related to whether Revere has, in fact, tendered an overbid. As the Court said towards the beginning of the most recent hearing on the matter, on February 1, 2017:

Those [the Original Compromise Motions] were done I want to say nine, ten months ago, and then the motion was filed maybe seven, eight months ago roughly, and there's been all this delay, and then less than 24 hours ago we get a massive stack of a new settlement from the Trustee and Revere that I think everyone would agree is very much not apples to apples. We're now apples to oranges.

My preference would be, I mean, so much of this is coming very late. My preference would be that really given the time that's passed and this, we'll call it speculative nature of that new settlement, which I did not digest other than a very quick review, and it's certainly far more complex than what was initially proposed, was really just to open up the pending motions to overbidder, and the, I was involved the *Mickey Thompson* case. I do believe that 9019 is subject to a 363 overbidding. I think that's the right result. I'm not saying that a trustee can never, or a party can never, counter a straight dollar bid with a different more complex bid, and that's certainly in the Trustee's discretion or largely in the Trustee's discretion, but these circumstances are a little bit

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different. There's been such a passage of time, and the new settlement is so complex and speculative related to what's here, and as a backdrop against this, given the administrative expenses, I'm not comfortable that there's going to be anything for anyone under any of these scenarios. So I feel the cleanest way is just to open up the pending settlement and if Revere believes they're worth more, that's fine. I understand the settlement is more expansive than that. The settlement can be revised to carve those out.

[Dkt. #454, p. 5-6]. In addition to the Court's concern regarding the disparate nature of the New Compromise Motion compared to the Original Compromise Motions, the following concerns were among those raised at the hearing on February 1, 2017: (1) that the settlement agreement provided that it was voidable if modified by the Court; and (2) that the nature, extent, and priority of Revere's lien, from which a carve-out was to be granted, were possibly subject to disputed. The Court later expressed its concerns to the parties regarding the operation of § 550 if Revere was successful in an avoidance action. The opposition of KMB and Defendants have largely questioned the value of Revere's "overbid," and KMB has asserted that the Court does not have adequate information to compare the settlements.

Therefore, the Court must engage in the following two-step analysis: (1) does the New Compromise offer more value than the Original Compromise Motions; and (2) do concessions made to Revere in the New Compromise Motion sufficiently reduce the value provided by Revere as to prevent the New Compromise Motion from being an overbid.

There are also two secondary considerations that inform the Court's deliberations. First, as noted by KMB, in making its determination, the Court must be presented with sufficient evidence to formulate an informed and intelligent opinion. Nevertheless, as noted by Revere, the Court should not conduct a mini-trial on every disputed issue, for that would eliminate the utility of a settlement altogether.

Second, the Court is cognizant of the uniqueness of this situation. On one hand, the primary opposition to the New Compromise Motion comes from the Defendants, parties whose interest, if not exactly adverse to, are certainly not synonymous with the interests of the estate. On the other hand, if the New Compromise Motion provides a much greater benefit to the estate, as Revere contends, then it should have been

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relatively simple to bifurcate the New Compromise Motion to create two agreement: (1) an overbid on the subject matter of the Original Compromise Motions; and (2) a settlement governing the remainder of the material in the New Compromise Motion. Yet, despite exhortations from the Court to that effect at the hearing on February 1, 2017, Revere has declined to adjust its position. This is even more concerning because the Court expressed skepticism regarding the characterization of the New Compromise Motion as an "overbid" at the hearing on February 1, 2017, then, later, expressed additional concerns that made the New Compromise Motion even less palatable, yet Revere has offered no clear response to the issues raised by the Court.

Returning to the two-step analysis identified above, the first consideration for the Court is to address the proposed Revere "carve-out." Importantly, if this "carve-out" was instead cash, the analysis today would be simpler. Therefore, the Court must consider why this distinction is important, and determine the consequences of the distinction. As noted in page 8 of Defendants' opposition, there are two concerns in this respect: (1) whether Revere actually has a security interest in the carve-out funds; and (2) whether there is a senior security interest in those funds. Regarding the latter, page 7 of Revere's reply appears to contain a warranty that if there is a senior secured interest, then Revere will provide funds to replace any value lost to the estate.² This would appear to eliminate concerns regarding the priority of Revere's security interest in the carve-out, if any. Regarding the former, a cursory review of Revere's proof of claim (claim #11), establishes that Revere contends that it has a blanket lien on Debtor's assets. The only remaining dispute would be whether the underlying security agreement is valid and enforceable against the estate. If it is, assuming the Court's interpretation of Revere's guarantee, outlined in footnote 1, is correct, it would appear that Revere has demonstrated it is offering more value than offered in the Original Compromise Motions.

But Revere is also requesting more in return. Specifically, not only would the avoidance actions underlying the Original Compromise Motions be assigned to a liquidating trust controlled by Revere, but all causes of action would be assigned. Specifically, the New Compromise Motion, at § 4.25, defines "liquidating trust assets" as:

all causes of action, claims, choses in action, and any rights of recovery whatsoever that the DJRI Estate now owns or owns in the future, except the tax attributes of DJRI.

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The New Compromise Motion also states that the Trustee will allow Revere a \$5,500,000 claim, of which \$4,000,000 will be treated as secured. Additionally, the New Compromise Motion states that the Trustee will not contest the validity, perfection, and scope of the DJRI Security Agreement. Furthermore, the agreement provides that the Trustee grants Revere relief from stay to prosecute any claims of the bankruptcy estate, as well as Revere's state-court action. Ultimately these three assets concessions are summarized as follows: (1) Revere's claim is fixed at a certain amount; (2) all recovery rights of Trustee are assigned to a liquidating trust controlled by Revere; and (3) Revere has full freedom to prosecute any claims of the estate.

Regarding the fixing of Revere's claim, Revere filed proof of claim number 11 which makes the contradictory statements that the amount of the claim is \$2,935,429.17, that the secured claim is \$4,768,638.29, and that the unsecured claim is \$805,354.20. While not objected to in the instant case, a similar and overlapping claim was filed in Debtor's principal's individual case, and is currently subject to a claim objection. Trustee's claim objection requested that the Court reduce the claim to \$527,910, and hold an evidentiary hearing to determine how much of the claim is secured. While Trustee's objection was withdrawn after reaching a resolution with Revere, the claim remains subject to dispute due to an objection filed by Debtor. While Debtor, or any other party, would appear to maintain the right to object to Revere's claim, the New Compromise Motion, by its terms, appears to attempt to give Revere a blanket, first priority lien over all the estate's assets by attempting to provide an adequate protection lien that relates back to 2007.

Second, regarding the prosecution of actions through the utilization of a liquidating trust, the open-ended nature of the settlement makes a valuation of such a right inherently speculative. The Court lacks sufficient evidence that would enable the formation of even a rough estimate.

Third, the blanket grant of relief from stay presents problems. For instance, the New Compromise Motion, at the first sentence of § III.A.3.d, states: "[t]he liquidating trustee has full discretion to decide which Liquidating Trust Assets to investigate, which Liquidating Trust Assets to advance litigation expenses/costs to pursue, and which Liquidating Trust Assets to liquidate." Then, the second clause of § III.B.8 states: "[t]he DJRI Trustee grants RFC relief from stay to prosecute all claims that the

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bankruptcy estate owns and that neither the Liquidating Trustee nor the DJRI Trustee choose to prosecute." These two statements, read in conjunction³, appear to indicate that Revere, in its unlimited discretion, would have the contractual right to decline to bring any actions through the liquidating trust, and then bring any action, in bankruptcy or state court, in its own name. In such a situation, the result would be that the Trustee agrees to receive \$226,973.95 (all of which would likely go towards administrative claims, since, at the previous hearing, Trustee's counsel stated its fees were already over \$400,000) in return for essentially abdicating its role as Trustee, while Revere would, for all intents and purposes, own Debtor. Essentially, the result would be that Revere purchased Debtor from Trustee.

Ignoring the myriad potential problems with the above scenario, the situation illustrates the dilemma at issue here. Given the unwieldy administrative claims in this case, in order for there to be any distribution to unsecured creditors, Revere would have to recover, at a minimum, in excess of approximately \$1,000,000. If such an amount were recovered, the New Compromise Motion would represent a great bargain for Revere, and Revere would easily recoup its cost. If such an amount is not recovered, then the unsecured creditors other than Revere will not be paid a penny, which reflects Revere's apparent leverage over Trustee under the settlement. And, ultimately, the question becomes, what is being given up by Revere in the New Compromise Motion? A carve-out, representing approximately 5% of the collateral, based on a security agreement which is in dispute, a dispute the settlement attempts to close the door on.

While Revere, citing *Lahijani*, contends that the Court should estimate the value of each component of the New Compromise Motion, and that an "apples to oranges" overbid should be considered, the Court requires evidence upon which it can formulate an informed, intelligent estimate of the value of the different components. Here, the comprehensive and complicated nature of the settlement precludes such an estimate. While the Court acknowledges that it could attempt to evaluate an "apples to oranges" overbid, that is not what has been presented. Instead, the New Compromise Motion constitutes an "apples to kangaroos" overbid.

Finally, while Revere contends that deference to Trustee's business judgment is necessary, the Court's standard approach to settlement agreements is altered by the line of reasoning expressed in *In re Seminole Walls & Ceilings Corp.* 388 B.R. 386,

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391-96 (Bankr. M.D. Fla. 2008). The Court concludes that, rather than simply deferring to Trustee's business judgment, the Court must determine whether the New Compromise Motion constitutes an overbid compared to the Original Compromise Motions. And, on the record before the Court, such a determination is infeasible.

Nevertheless, as the Court expressed at the previous hearing, if the New Compromise Motion is so clearly more beneficial to the bankruptcy estate than the Original Compromise Motions, Revere should have no trouble bifurcating the agreement to produce an overbid, and a remainder agreement, the latter of which, in the absence of a pre-existing competing settlement, would be assessed under the default, general Fed. R. Bankr. P. Rule 9019 standards. Therefore, the Court is inclined to schedule an auction to allow Revere to overbid on the adversary proceedings related to the Original Compromise Motions. While such an overbid need not necessarily come in the form of "apples to apples," "apples to kangaroos" will be subject to the same concerns repeatedly expressed by the Court.

TENTATIVE RULING

Subject to discussion from the parties, the Court is inclined to schedule an auction.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

#4.00 CONT Motion for Approval of Compromise Between Trustee and Douglas J. Roger, MD, Inc. Define Benefit Plan

FROM: 6/28/17

Also #2,3,5 & 6

EH__

Docket 320

Tentative Ruling:

6/28/17

See tentative for matter #10.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

#5.00 CONT Motion to Approve Compromise Under Rule 9019 and Enforce the Settlement Agreement Between the Chapter 7 Trustee and OIC Medical Corporation, Liberty Orthopedic, and Universal Orthopaedic Group

From: 6/28/17

Also #2,3,4 & 6

EH__

Docket 404

Tentative Ruling:

6/28/17

See tentative for matter #10.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

OIC Medical Corporation

Represented By
Summer M Shaw

LIBERTY ORTHOPEDIC

Represented By
Summer M Shaw

UNIVERSAL ORTHOPAEDIC

Represented By
Summer M Shaw

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Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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Chapter 7

#6.00 CONT Motion to Approve Compromise Under Rule 9019 and Enforce the Settlement Agreement Between the Chapter 7 Trustee and OIC Medical Corporation, Liberty Orthopedic, and Universal Orthopaedic Group

From: 6/28/17

Also #2,3,4 & 5

EH__

Docket 403

Tentative Ruling:

6/28/17

See tentative for matter #10.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

Douglas J Roger, MD, Inc. Defined

Represented By
Summer M Shaw

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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6:11-13230 Clyde Lee Jaso and Marie Lupe Jaso

Chapter 7

#7.00 Motion to Avoid Judicial Lien with Safeco Insurance Company of America

EH__

Docket 41

Tentative Ruling:

8/2/2017

Service: Proper

Opposition: None

The Court has reviewed the motion, and good cause appearing, the Court is inclined to GRANT the motion, avoiding the lien of Safeco Insurance Company of America.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Clyde Lee Jaso

Represented By
Gregory J Doan
Cheryl R Lee
John F Brady

Joint Debtor(s):

Marie Lupe Jaso

Represented By

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CONT... Clyde Lee Jaso and Marie Lupe Jaso

Chapter 7

Gregory J Doan
Cheryl R Lee
John F Brady

Movant(s):

Marie Lupe Jaso

Represented By
Gregory J Doan
Cheryl R Lee
John F Brady

Clyde Lee Jaso

Represented By
Gregory J Doan
Cheryl R Lee
John F Brady

Trustee(s):

Robert Whitmore (TR)

Pro Se

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6:17-12976 Modern Properties, LLC

Chapter 7

#8.00 CONT Motion to Vacate Dismissal of Case

From: 6/7/17, 6/28/17

EH__

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Modern Properties, LLC

Represented By
Robert L Firth

Movant(s):

Larry D Simons (TR)

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

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6:17-14954 Joycee Dalene Bowen

Chapter 7

#9.00 Order to Show Cause Re: Dismissal for Failure to File, or Seek Waiver of Certificate of Credit Counseling

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joycee Dalene Bowen

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

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6:16-16434 Ryan David Miller and Courtney Renee Miller

Chapter 7

#10.00 Motion to Disallow Claims #1 filed by Ford Motor Credit Company, LLC

EH__

Docket 33

Tentative Ruling:

8/2/17

Background:

On July 20, 2016, Ryan and Courtney Miller ("Debtors") filed a Chapter 7 voluntary petition. On December 8, 2016, Ford Motor Credit ("Creditor") filed a claim in the amount of \$2,008.71 ("Claim 1"). On June 8, 2017, Trustee filed a "claim objection," which, instead of requesting that Claim 1 be disallowed, requested that Claim 1 be allowed as fully secure.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

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When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

11 U.S.C. § 502(a) 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 under chapter 7 of this title, objects." Therefore, Claim 1 is allowed in accordance with the proof of claim until an objection is filed with the Court.

Here, while Creditor indicated on Claim 1 that at least part of its claim was secured, it did not complete the portion of the proof of claim that would identify whether Claim 1 was wholly or partly secured. As a result, Claim 1 was entered in the claims register as an unsecured claim.

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Now Trustee requests that the Court treat Claim 1 as a fully secured claim. Fed. R. Bankr. P. Rule 3012 states:

The court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other entity as the court may direct.

Trustee seeks to have the claim treated as fully secured so no distribution need be paid. Despite being served with the objection, creditor has not objected, and thus is deemed to consent to the relief requested pursuant to Local Rule 9013-(1)(h).

Tentative Ruling

The Court is inclined to SUSTAIN the claim objection.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Ryan David Miller

Represented By
Andrew Nguyen

Joint Debtor(s):

Courtney Renee Miller

Represented By
Andrew Nguyen

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Movant(s):

Robert Whitmore (TR) Pro Se

Trustee(s):

Robert Whitmore (TR) Pro Se

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

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#11.00 Motion for Approval of Bidding Procedures

EH__

Docket 497

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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6:11-30939 Roberta Louise Clark

Chapter 7

#12.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 105

Tentative Ruling:

8/2/2017

No opposition has been filed.
Service was Proper.

The applications for compensation of the Trustee, Counsel for the Trustee, and Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 20,896.75

Trustee Expenses: \$ 236.55

Attorney Fees: \$ 65,098.08

Attorney Costs: \$ 1,931.23

Accountant Fees: \$ 4,017

Accountant Costs: \$ 64.50

United States Bankruptcy Court: \$600

United States Treasury: \$361.05

The \$1,670 reduction in accountant fees is due to the elimination of the following time entries:

- 1) \$460 for 11/26/14. This entry includes lumping (the entry corresponds to four tasks), and appears unclear and possibly unnecessary. The entry appears to

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Chapter 7

include 2.3 hours of review of calculations and related materials, despite the fact that the remainder of the time entries do not evidence any significant (possibly any) calculations occurring close in time to this review.

- 2) \$500 for 1.30/17, \$330 for 2/2/17, and \$380 for 2/6/17. These three entries appear excessive or unnecessary. All three entries are for review of tax documents which were already prepared, and the length of time and hourly rate billed appear unreasonable, especially considering that there is no indication that any revisions were required or completed.

Movant may elect not to appear and submit on the tentative, or may appear to argue the reductions noted in the tentative.

Party Information

Debtor(s):

Roberta Louise Clark

Represented By
Robert L Firth

Trustee(s):

Todd A. Frealy (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, August 02, 2017

Hearing Room 303

11:00 AM

6:16-18424 JORGE V LAZARO and YESSSENIA M LAZARO

Chapter 7

#13.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 107

Tentative Ruling:

8/2/2017

No opposition has been filed.
Service was Proper.

The applications for compensation of the Trustee and Counsel for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1,629.50
Trustee Expenses: \$ 352.30

Attorney Fees: \$ 3,000
Attorney Costs: \$ 595.82

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

JORGE V LAZARO

Represented By
Daniel S March

Joint Debtor(s):

YESSSENIA M LAZARO

Represented By
Daniel S March

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, August 02, 2017

Hearing Room 303

11:00 AM

CONT... JORGE V LAZARO and YESSENIA M LAZARO

Chapter 7

Trustee(s):

Todd A. Frealy (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, August 02, 2017

Hearing Room 303

11:00 AM

6:16-20481 Raymundo Carlos, Jr. and Mili Dianely Carlos

Chapter 7

#14.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 27

Tentative Ruling:

8/2/17

No opposition has been filed.

Service was proper under the circumstances.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expense:

Trustee Fees: \$ 846.00

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Raymundo Carlos Jr.

Represented By
Donald M Medeiros

Joint Debtor(s):

Mili Dianely Carlos

Represented By
Donald M Medeiros

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, August 02, 2017

Hearing Room 303

11:00 AM

6:16-15004 Barbara Ellen Dunn-Leonard

Chapter 7

#15.00 Chapter 7 Trustee's Motion for Order Compelling Turnover of Debtor's Books and Records

EH__

Docket 35

Tentative Ruling:

08/02/2017

Factual Background

On June 3, 2016 ("Petition Date"), Barbara Ellen Dunn-Leonard ("Debtor") filed a chapter 7 petition. Discharge was granted on September 12, 2016. Larry D. Simons ("Trustee") is the duly appointed chapter 7 trustee.

Debtor's Schedule A/B lists Debtor's interest in a whole-life-policy-with-an-irrevocable-trust, Barbara Dunn-Leonard Insurance Trust ("Policy"). The beneficiaries to the Policy are listed as Ralph Edwards Production ("Ralph Edwards"), Daughter, and Son. The Policy has a cash value of \$120,949.35. Debtor claims a \$14,325.00 exemption pursuant to C.C.P. § 703.140 (b)(8) and a \$18,149.00 exemption pursuant to C.C.P. § 703.140 (b)(5) on the Policy.

On October 7, 2016, Trustee sent an e-mail to Debtor's counsel, Leslie K. Kaufman. In said e-mail Trustee asked "if there were any documents which would evidence the security interest in the life insurance policy as asserted by the debtor?" ("October 7 E-mail"). Trustee alleges that no response was received. Trustee then e-mailed Debtor's counsel again on April 28, 2017 with a similar inquiry ("April 28 E-mail"). Trustee alleges no response was received from Debtor's counsel regarding the April 28 E-mail. Trustee concedes that he is in possession of the Policy.

On July 5, 2016, Trustee filed a Motion for Order Compelling Turnover of Debtor's Books and Records ("Motion"). Trustee alleges that Debtor has failed to comply with 11 U.S.C. §§ 521 and 542. Trustee requests that the Court compel Debtor to turnover books and records relating or pertaining to the Debtor's interest in

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CONT... **Barbara Ellen Dunn-Leonard**

Chapter 7

the cash surrender value of the Property and books and records relating to or pertaining to the security interest of Ralph Edwards in and to the Policy and its cash surrender value.

Opposition

On July 19, 2017, Debtor filed an opposition ("Opposition") to Trustee's Motion. Debtor asserts that Trustee's Motion is improper and a misrepresentation of the events leading to the Motion. Debtor asserts that she has fully complied with each of Trustee's requests and there is no other information or documents to be turned over. Debtor asserts that, through counsel, she has spent more than a year trying to determine whether Debtor could do anything else to assist Trustee. Debtors attempts were ignored by Trustee and Trustee's counsel.

In support of Debtor's Opposition, Debtor provides as evidence a series of e-mails. The e-mails are outlined below:

Date	Sender	Content
07/08/2016	Debtor's Counsel	E-mail containing letter explaining Ralph Edwards' interest in the trust, as well as the 2015 Policy statement
10/07/2016	Trustee	Request for any further information about the Policy/Trust
10/11/2016	Debtor's Counsel	Debtor is unaware of any security interest documents outside those set forth in the Trust
11/29/2016	Debtor's Counsel	Request for call to discuss the Trust
11/29/2016	Trustee's Counsel	Counsel states "I will reach out to you in the next day or so"
12/13/2016	Debtor's Counsel	Counsel states "I have still not received any communication from you other than your email of November 29th. Please call me at your earliest convenience."

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CONT...

Barbara Ellen Dunn-Leonard

Chapter 7

12/13/2016	Trustee's Counsel	Counsel states "I left a voicemail for you a week or two ago, I cannot recall. I will reach out again, but you can always send me an email with your inquiry and I will respond."
12/13/2016	Debtor's Counsel	Counsel writes "There was no voicemail message. My November 28 th email appears at the bottom of this chain below. Please call me at your earliest convenience."
04/28/2016	Debtor's Counsel	Counsel writes " Despite the passage of almost six months I have still not received any substantive communication from you. I left messages on your voicemail on March 15, 2017 at 4:40 PM; and on April 26,2017 at 12:01 PM, but have yet to receive a return call. Please contact me at your earliest convenience so that we may discuss the above referenced bankruptcy matter."

Each e-mail sent by Debtor's counsel was sent to the attorney of record for Trustee as well as to the Trustee. Debtor's counsel also requested to be advised if there had been a change of counsel or if it was best to communicate directly with Trustee.

Furthermore, Debtor asserts that Trustee's representation that Debtor never responded to the request made via the October 7 E-mail is incorrect. Debtor responded to the request on October 11, 2017. Debtor also contends that the April 28 E-mail presented by Trustee in the Motion, was in fact a response to an e-mail sent by Debtor's counsel and not a stand-alone inquiry made by Trustee.

Debtor requests that the Court award attorney fees and costs needed to oppose the Motion.

Reply

On July 26, 2017, the Trustee filed his reply to the Opposition asserting, correctly, that no direct evidence has been provided to support the explanations

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CONT... **Barbara Ellen Dunn-Leonard**
referenced by Debtor's Counsel in her declaration.

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Discussion

A. Motion for Order Compelling Turnover of Records

A debtor must cooperate with the trustee as necessary to enable the trustee to perform his statutory duties. 11 U.S.C. § 521(a)(3). Among those duties is the trustee's duty to "collect and reduce to money the property of the estate for which the trustee serves, and close the estate as expeditiously as is compatible with the best interests of parties in interest." 11 U.S.C. § 704 (a)(1). Furthermore the trustee must "investigate the financial affairs of the debtor." 11 U.S.C § 704 (a)(4).

A debtor must surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers relating to the property of the estate. 11 U.S.C. § 521(a)(4). Property of the estate includes "all legal or equitable interests of the debtor is property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Life insurance policies are not excluded from becoming part of the bankruptcy estate. *Gladstone v. U.S. Bancorp*, 811 F.3d 1133, 1140 (9th Cir. 2016).

Here, Debtor has presented in her Schedule A/B the Policy with a cash value of \$120,949.35. Pursuant to 11 U.S.C. § 541(a)(1), the Policy is property of the estate. Debtor must surrender all books, document, records and papers relating to the Policy pursuant to 11 U.S.C. § 521(a)(4). Debtor asserts all documents have been surrendered.

Under 11 U.S.C. § 542(a), an entity in "possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a). Trustee asserts that Debtor has failed comply with § 542 in that she has failed to deliver to Trustee the records pertaining to the Policy, Debtor's interest in the cash value, and Ralph Edwards' interest in the Policy.

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CONT...

Barbara Ellen Dunn-Leonard

Chapter 7

Trustee concedes that he is in possession of the Policy and the irrevocable trust. However, Trustee alleges that he needs to review any records pertaining to Ralph Edwards' interest in the Policy in order to determine the validity of Ralph Edwards' interest in the Policy. According to Trustee, Debtor has failed to cooperate with Trustee and those documents have been denied to him. Furthermore, Trustee needs the additional records to determine if Ralph Edwards' interest is a preferential transfer or a fraudulent conveyance. This information is relevant to a determination of whether Ralph Edwards' interest may be avoided for the benefit of the estate.

Debtor alleges that all documents requested by Trustee were turned over to Trustee on July 8, 2017. Debtor contends that there are no other documents which can be provided to Trustee and Trustee was informed of this on October 11, 2017. However, the Trustee correctly points out that the Debtor has not provided direct evidence from the Debtor regarding the underlying facts asserted in the Opposition. Specifically, the Opposition provides only second-hand hearsay evidence by Debtor's counsel regarding the non-existence of documents responsive to the Trustee's request for turnover and although the Opposition purports to provide an explanation of the facts surrounding the grant of a security interest to Ralph Edwards Productions by the Debtor in her Life Insurance Trust, there is no declaration by the Debtor to support these facts nor is Counsel able to testify to their veracity.

B. Debtor's Request for Attorney's Fees and Cost

Debtor fails to provide any statutory authority under which attorney's fees and costs may be awarded. Thus, this request is denied.

Tentative Ruling

Based on the foregoing, the Court is inclined to GRANT the Trustee's Motion and order turnover of the documents. Alternatively, the Court may set the matter for an evidentiary hearing for the Debtor to testify regarding the facts described in the Opposition.

APPEARANCES REQUIRED.

Party Information

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CONT... Barbara Ellen Dunn-Leonard

Chapter 7

Debtor(s):

Barbara Ellen Dunn-Leonard

Represented By
Leslie K Kaufman

Movant(s):

Larry D Simons (TR)

Represented By
Daniel A Lev

Trustee(s):

Larry D Simons (TR)

Represented By
Daniel A Lev

**United States Bankruptcy Court
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Hearing Room 303

11:00 AM

6:17-13180 Gloria Del Carmen Bolanos

Chapter 7

#16.00 Motion to Compel the Debtor to Appear at 341(a) Meeting of Creditors and Cooperate with the Trustee

EH__

Docket 18

Tentative Ruling:

Background
08/02/2017

On April 18, 2017, Gloria Carmen Bolanos ("Debtor") filed a voluntary petition under Chapter 7 commencing the current bankruptcy case. Lynda T. Bui ("Trustee") was appointed as the Chapter 7 trustee.

On April 20, 2017, the Trustee received a letter from Wells Fargo identifying a bank account owned by the Debtor with a value of \$6,075.33. No bank account was identified in the Debtor's bankruptcy schedules. On May 23, 2017, the Debtor failed to appear at the initial 341(a) meeting of creditors. The Debtor also failed to appear at the continued meetings on June 2, 2017 and June 20, 2017.

On June 28, 2017, the Trustee filed this motion to compel the Debtor's attendance at a continued 341(a) meeting of creditors and cooperate with the Trustee ("Motion"). Currently, a continued 341(a) meeting is scheduled for July 25, 2017, and the Trustee has indicated that she would dismiss the motion if the Debtor attended. No opposition has been filed.

Discussion

The Bankruptcy Code and Federal Rules of Bankruptcy Procedure ("FRBP") impose several duties on Chapter 7 debtors. The debtor's general duties in a bankruptcy case are set forth in Bankruptcy Code section 521. Federal and local bankruptcy rules specify how these duties are to be carried out.

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CONT...

Gloria Del Carmen Bolanos

Chapter 7

Bankruptcy Code section 343 states that "the debtor *shall* appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title." 11 U.S.C. § 343 (emphasis added). FRBP 4002 also provides that a "debtor *shall*: (1) attend and submit to an examination at the times ordered by the court" and "(4) cooperate with the trustee in ... the administration of the estate". FRBP 4002 (emphasis added). In other words, the debtor has a mandatory obligation to submit to examination at the 341(a) meeting of creditors and to cooperate with the Trustee in administration of the estate.

In this case, the Trustee has presented evidence in the form of a declaration that Debtor has failed to attend the initial 341(a) meeting and two continued 341(a) meetings. Further, the Trustee needs to examine the Debtor in order to determine if the Wells Fargo account is available for administration. As such, the Debtor has violated her duty to cooperate with the Trustee in her administration of the estate. Accordingly, the Debtor will be compelled to appear at the next scheduled 341(a) meeting, assuming the Debtor has failed to attend the meeting currently scheduled for July 25, 2017.

Tentative Ruling

Based on the foregoing, the Motion is GRANTED, and the Debtor is ordered to appear at the next 341(a) meeting of creditors scheduled by the Trustee.

APPEARANCES WAIVED. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Gloria Del Carmen Bolanos	Pro Se
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Movant(s):

Lynda T. Bui (TR)	Pro Se
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Trustee(s):

Lynda T. Bui (TR)	Pro Se
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Hearing Room 303

11:00 AM

6:17-12748 William A. Mendez, II and Shawna D. Mendez

Chapter 7

#17.00 Motion for order extending Time for The Chapter 7 Trustee and the United States Trustee to File a Complaint to Object to Debtors' Discharge (11 U.S.C. sect 727)

EH__

Docket 34

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/1/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William A. Mendez II

Represented By
Thomas J Polis

Joint Debtor(s):

Shawna D. Mendez

Represented By
Thomas J Polis

Movant(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy

Trustee(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy

**United States Bankruptcy Court
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11:00 AM

6:16-14390 Jina Soo Choi

Chapter 7

#18.00 CONT Motion of United States Trustee For An Order Disgorging Fees, Assessing Damages, And Imposing Fines And Against Bankruptcy Petition Preparer Sandra Cooper Pursuant to 11 U.S.C. § 110

CASE DISMISSED 3/6/17

From: 4/6/17, 4/26/17

EH__

Docket 70

Tentative Ruling:

04/26/2017

BACKGROUND

On May 16, 2016 ("Petition Date"), Jina Soo Choi ("Debtor") filed her petition for chapter 13 relief. On August 4, 2016, the case was converted to a case under chapter 7. On January 6, 2017, the Debtor moved the Court for an order dismissing her case. The case was dismissed on March 6, 2017.

On March 10, 2017, the Office of the United States Trustee ("UST") filed its Motion of United States Trustee For An Order Disgorging Fees, Assessing Damages, And Imposing Fines And Against Bankruptcy Petition Preparer Sandra Cooper Pursuant to 11 U.S.C. § 110 ("Motion"). The Motion was amended on March 29, 2017.

On April 5, 2017, Sandra Cooper ("Cooper") filed her opposition to the Motion ("Opposition"). On April 19, 2017, the UST filed its reply to the Opposition ("Reply").

DISCUSSION

The Motion asserts that Cooper violated 11 U.S.C. § 110 by failing to disclose her identity as required by statute, by executing the Debtor's signature, and by failing to furnish copies of the filed bankruptcy documents to the Debtor. Based thereon, the

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CONT...

Jina Soo Choi

Chapter 7

UST requests disgorgement of fees, statutory damages of \$2,000 pursuant to § 110(i), and payment of fines to the UST in the total sum of \$21,000 (\$6,000 for individual violations in failing to disclose her identity as required under § 110(b)(1) and 110(c)(1), as tripled pursuant to §110(l)(1) for a total of \$18,000, in addition to \$3,000 for failing to furnish copies of the bankruptcy documents to the Debtor as required under §110(d)). (Note: the Reply indicates that the UST will not pursue an additional \$3,000 in fines requested by the Motion for executing documents on behalf of the Debtor unless the Court determines that an evidentiary hearing is appropriate).

By her Opposition, Cooper disputes that she is a bankruptcy petition preparer (a "BPP"). Cooper asserts that her assistance was limited to filing the bankruptcy petition ("walking in his paperwork") on behalf of Hee Chang Choi (the Debtor's husband). (Opposition at ¶ 5). Cooper further asserts that she never met the Debtor and instead that she was asked to assist the Debtor's husband with obtaining a loan modification (*Id.* at ¶¶2-3). Cooper disputes the allegation that she received any money either from the Debtor or from the Debtor's husband (*Id.* at ¶ F) and instead repeatedly asserts that she was only assisting the Debtor's husband on the request of an unidentified third party who had been helping the Debtor's husband with a "Free and Clear" program. (Cooper Declaration).

In *In re Reynoso*, the Ninth Circuit provided examples of cases in which a party has been properly deemed a bankruptcy petition preparer. As the Ninth Circuit explained,

It goes without saying that the customer must provide data to the preparer, and the customer's role in printing or otherwise reproducing the forms before filing does not alter the role of the preparer. Moreover, § 110 does not require that bankruptcy petition preparers have in-person interactions with their customers. *Cf. Ferm v. U.S. Trustee (In re Crowe)*, 243 B.R. 43, 49-50 (9th Cir. BAP 2000) (holding that the author of an instructional book on bankruptcy petitions who guaranteed buyers of the book that he would complete their forms for free if they were unable to do so themselves was, in fact, presenting himself as a bankruptcy petition preparer as defined by § 110(a)(1)), *aff'd*, 246 F.3d 673 (9th Cir.2000) (unpublished table decision); *In re Doser*, 281 B.R. 292, 303-04 (Bankr.D.Idaho 2002) (reasoning that a franchisor who receives information that was solicited

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CONT...

Jina Soo Choi

Chapter 7

in a face-to-face interaction between the franchisee and the customer and uses that information to prepare bankruptcy documents, but never meets with the customer directly, is a bankruptcy petition preparer), aff'd, 412 F.3d 1056.

In re Reynoso, 477 F.3d 1117, 1123–24 (9th Cir. 2007).

The Cooper Opposition and supporting declaration are vague as to the details of how or why Cooper was engaged to work with the Debtor's husband. Cooper repeatedly makes reference to a third party that was a point of contact between the Debtor's husband and her. However, this third party is never identified. Additionally, Cooper indicates she was only helping the alleged third party but disputes that she ever received money in connection with her assistance and disputes that she did anything other than "walk in" the petition documents to the Court. Cooper's assertions, however, are not credible. There is no indication of the nature of Cooper's relationship with the alleged third party and no detail as to why she would assist the Debtor's husband or the alleged third party agent without any compensation. The Choi Declaration provided by the UST makes reference to a third party who the Debtor asserted was a patient of the Debtor's husband. The Debtor's declaration asserts that the patient referred her husband to Cooper for the purpose of negotiating a loan modification. (Mot. at Exh. 1, Choi Decl. ¶7). Cooper correctly points out that the information regarding the third party/patient is hearsay. However, the remainder of the Choi declaration unequivocally identifies Cooper, and only Cooper, as the point of contact for all communications regarding the filing of the bankruptcy for the Debtor. (*Id.* at ¶¶8-19).

As to the remaining allegations of the Motion, Cooper by her Opposition has specifically denied all of the allegations of the Motion, including that she executed the petition documents for the Debtor. In an effort to controvert the allegation that she did not disclose her identity, Cooper notes that she was asked for a copy of her driver's license when filing the petition and provided it. Cooper's willingness to provide her Driver's license to the clerk when filing the petition, however, does not overcome her failure to provide specific identifying information on the petition itself as required pursuant to § 110, such as an address and social security number. Thus, assuming the Court finds that Cooper is a BPP within the meaning of the statute, the Court is inclined to GRANT the Motion pursuant to the reduced figure requested by the UST

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CONT... **Jina Soo Choi**
in its Reply.

Chapter 7

TENTATIVE RULING

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jina Soo Choi

Represented By
Nicholas S Nassif

Movant(s):

United States Trustee (RS)

Represented By
Mohammad Tehrani
Everett L Green

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, August 02, 2017

Hearing Room 303

2:00 PM

6:16-16191 Sheri Tanaka Christopher

Chapter 7

Adv#: 6:17-01028 Frealy, Chapter 7 Trustee v. Tanaka et al

#19.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01028. Complaint by Todd A Frealy, Chapter 7 Trustee against Ronald Howard Tanaka, Carolyn Naomi Tanaka, Ryan Satoshi Tanaka, Leora Linda Tanaka, Estate of Yaeko Sato, a California Probate Estate. (Charge To Estate). Complaint for: (1) Sale of Real Property Pursuant to 11 U.S.C. § 363(h); and (2) Turnover of Property of the Estate Pursuant to 11 U.S.C. § 542 (Attachments: # 1 Adversary Proceeding Cover Sheet) 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))

From: 4/5/17, 6/7/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sheri Tanaka Christopher

Represented By
Brian J Soo-Hoo

Defendant(s):

Leora Linda Tanaka

Represented By
David L Prince

Estate of Yaeko Sato, a California

Represented By
David L Prince

Ryan Satoshi Tanaka

Represented By
David L Prince

Ronald Howard Tanaka

Represented By
David L Prince

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CONT... Sheri Tanaka Christopher
Carolyn Naomi Tanaka

Chapter 7

Represented By
David L Prince

Plaintiff(s):

Todd A Frealy, Chapter 7 Trustee

Represented By
Montserrat Morales

Trustee(s):

Todd A. Frealy (TR)

Represented By
Montserrat Morales

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Hearing Room 303

2:00 PM

6:13-30477 Master Design Inc

Chapter 7

Adv#: 6:15-01370 Speier v. Test-Rite Products Corp. et al

#20.00 CONT Status Conference Re: Complaint by Steven M Speier against Test-Rite Products Corp., Test-Rite International (U.S) Co. Ltd., Test-Rite International Co. Ltd., Judy Lee, Chester Lee, Christina Ma. (Charge To Estate). Complaint for: (1) Fraudulent Transfer Pursuant to 11 U.S.C. § 544(b) and Cal. Civ. Code § 3439.04(a)(1) and Recovery of Avoided Transfers Pursuant to 11 U.S.C. § 550; (2) Fraudulent Transfer Pursuant to 11 U.S.C. § 548(a)(1)(A) and Recovery of Avoided Transfers Pursuant to 11 U.S.C. § 550; (3) Fraudulent Transfer Pursuant to 11 U.S.C. § 544(b) and Cal. Civ. Code §§ 3439.04(a)(2), 3439.05 and Recovery of Avoided Transfers Pursuant to 11 U.S.C. § 550; (4) Fraudulent Transfer Pursuant to 11 U.S.C. § 548(a)(1)(B) and Recovery of Avoided Transfers Pursuant to 11 U.S.C. § 550; (5) Conversion; (6) Unlawful Payment of Dividends; (7) Breach of Fiduciary Duty by Officer; (8) Breach of Fiduciary Duty by Controlling Shareholder; and (9) Declaratory Relief as to Alter Ego Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 3/2/16, 4/6/16, 4/27/16, 6/29/16, 7/20/16, 8/3/16, 9/28/16, 11/9/16, 3/29/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Master Design Inc

Represented By
Eric M Sasahara
John Y Kim

Defendant(s):

Christina Ma

Represented By

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2:00 PM

CONT... Master Design Inc

Chapter 7

Julie A Garcia
Joon M Khang
Aaron S Craig
Brian Wheeler

Test-Rite International (US) Co. Ltd.

Represented By
Joon M Khang
Julie A Garcia
John Y Kim
Aaron S Craig
Brian Wheeler

Test-Rite Products Corp.

Represented By
Joon M Khang
Julie A Garcia
John Y Kim
Aaron S Craig

Chester Lee

Represented By
Julie A Garcia
Joon M Khang
Aaron S Craig
Brian Wheeler

Test-Rite Products Corp.

Represented By
Julie A Garcia
John Y Kim
Aaron S Craig
Brian Wheeler

Test-Rite International (U.S) Co.

Represented By
Julie A Garcia
John Y Kim
Aaron S Craig

Test-Rite International Co. Ltd.

Represented By
Julie A Garcia
Aaron S Craig
Joon M Khang

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CONT... Master Design Inc

Chapter 7

John Y Kim
Brian Wheeler

Plaintiff(s):

Steven M Speier

Represented By
Robert P Goe
Marc C Forsythe

Trustee(s):

Steven M Speier (TR)

Represented By
Robert P Goe
Marc C Forsythe
Donald Reid

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, August 02, 2017

Hearing Room 303

2:00 PM

6:16-20927 Mee Soon Kim

Chapter 7

Adv#: 6:17-01064 Jabro v. Kim et al

#21.00 OSC why adversary complaint should not be dismissed

Also #22

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mee Soon Kim

Represented By
Minh Duy Nguyen

Defendant(s):

Tae Young Kim

Pro Se

Mee Soon Kim

Pro Se

Plaintiff(s):

Hikmat Jabro

Represented By
Michael H Jabro

Trustee(s):

Larry D Simons (TR)

Represented By
David Seror
Michael W Davis

**United States Bankruptcy Court
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6:16-20927 Mee Soon Kim

Chapter 7

Adv#: 6:17-01064 Jabro v. Kim et al

#22.00 CONT Status Conference Re: Complaint by Hikmat Jabro against Mee Soon Kim, Tae Young Kim . (14 (Recovery of money/property - other))

From: 5/17/17, 6/7/17, 7/12/17

Also #21

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mee Soon Kim

Represented By
Minh Duy Nguyen

Defendant(s):

Tae Young Kim

Pro Se

Mee Soon Kim

Pro Se

Plaintiff(s):

Hikmat Jabro

Represented By
Michael H Jabro

Trustee(s):

Larry D Simons (TR)

Represented By
David Seror
Michael W Davis

**United States Bankruptcy Court
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Hearing Room 303

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6:14-21472 David Joe Strait

Chapter 7

Adv#: 6:14-01340 Leong v. Strait

#23.00 Motion for Default Judgment against debtor under LBR 7055-1

Also #24

EH__

Docket 51

Tentative Ruling:

08/02/2017

BACKGROUND

On September 11, 2014 David Joe Strait ("Debtor") filed his petition for chapter 7 relief. On December 14, 2014, a suit was filed by Brenda Leong ("Plaintiff") against the Debtor. The Plaintiff's original suit was amended on May 29, 2015, and that pleading now constitutes the operative complaint (the "Complaint"). The Complaint alleges that:

1. Debtor has engaged in a pattern of fraud, deceit, and breach of fiduciary duty.
2. Debtor is owner of Double O Academy, LLC, Cal Arms Inc., and Spygear4less, Inc.
3. Debtor has used the assets of these corporations for his personal use without regard to the existence of the corporate entity. These LLCs and corporation are "mere shells."
4. In reliance on Debtor's representations, Plaintiff invested \$125,000 into Cal Arms and Spygear after Debtor proposed verbal and written agreements offering a percentage of shares to Plaintiff. Debtor was Plaintiff's business partner. Plaintiff also invested an additional \$50,000 with Debtor.
5. Debtor breached his fiduciary duty to Plaintiff by failing to disclose true nature of corporations' financial affairs and to pay Plaintiff each year 40% of net

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CONT...

David Joe Strait

Chapter 7

profits of Double O and 45% of net profits of Cal Arms and Spygear as promised.

6. Plaintiff has received no net profits or return on her investments or refund of her initial investment.
7. Debtor has fraudulently transferred assets of the Corporations in an effort to avoid the enforcement of any judgment.
8. Plaintiff holds an aggregate of 4,500 common share of stock in both Cal Arms and Spygear. Both have 10,000 outstanding shares each. Plaintiff owns 33.5% of both Cal Arms and Spygear.
9. Plaintiff seeks money damages in the amount of \$175,000 plus interest, an accounting of all of Debtor's corporations, attorney's fees and costs, and a determination that the debt is nondischargeable.

On June 18, 2015, the case was dismissed for Plaintiff's failure to prosecute. Plaintiff filed a motion to reopen the adversary proceeding on January 7, 2016. Plaintiff lodged an order to reopen the case on June 9, 2016. On January 6, 2017, the Court set aside the default and reinstated the adversary proceeding. On February 7, 2017, Plaintiff filed a Motion for Default Judgment. Said motion was denied without prejudice based on the following: (1) Plaintiff's failure to file a memorandum of points and authorities and (2) Plaintiff's failure to properly serve the Debtor with notice of the motion and hearing. On June 21, 2017, the Plaintiff filed the current Motion for Default Judgment ("Motion"). The Motion is unopposed.

DISCUSSION

A. Entry of Default

Federal Rule of Civil Procedure 55 states that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." Fed. R. Civ. P. 55(a). Per LBR 7055-1(b)(1), a motion for entry of default judgment shall contain the following:

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1. When and against what party default was entered

Plaintiff has requested entry of default against the Debtor by this Motion which the Court now enters based on the Debtor's failure to file any responsive pleading despite having been properly served.

2. Whether defaulting party is an infant or incompetent person – ✓ (N/A)
3. Whether the defaulting party is currently on active duty – ✓ (N/A)
4. Whether notice has been served on defaulting party, if required by FRCP 55(b)(2) ✓

B. Admissions

Pursuant to FRBP 7008(b)(6), failure to deny an allegation of the Complaint where a responsive pleading is required constitutes an admission of the allegation.

C. Default Judgment

Factors which may be considered by courts in exercising discretion as to the entry of a default judgment include: (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute considering material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the FRCP favoring decision on the merits. *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

1. Proper Service of Summons and Complaint

The Motion was served on the Debtor at the address specified on the Court's Docket on June 21, 2017. (See Motion at ¶3). Further, Debtor was also served at his personal email on June 21, 2017. Therefore, service is proper

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2. Whether the Default was due to Excusable Neglect

No opposition to the motion has been filed. Therefore, there is no evidence before the Court to suggest that Default has been entered due to excusable neglect.

3. Sufficiency of the Complaint & Merits of Plaintiff's claim

Upon default, the factual allegations of the complaint, **except those relating to the amount of damages**, will be taken as true. *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987); "The defendant, by his default, admits the plaintiff's **well-pleaded** allegations of facts, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established." *Nishimatsu Construction Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) (emphasis added); *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978); *Cotton v. Massachusetts Mut. Life Ins. Co.*, 402 F.3d 1267, 1278(11th Cir. 2005) (do not have to take as true facts that are not well-pleaded or conclusions of law). The Complaint generally alleges claims against the Debtor pursuant to 11 U.S.C. § 523(a)(2)(A) and 11 U.S.C. § 523(a)(4). In the Motion, the Plaintiff only alleges a claim under 11 U.S.C. § 523(a)(2)(A). Under § 532(a)(2)(A), a debt for services obtained by the debtor under "false pretenses, a false representation, or actual fraud" is nondischargeable. 11 U.S.C. § 523(a)(2)(A). The movant bears the burden of proving the applicability of § 523(a)(2)(A) by a preponderance of the evidence. In re Sabban, 600 f.3d 1219, 1222 (9th Cir. 2010) (citing Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman), 234 F.3d 1081, 1085 (9th Cir. 2000)). The elements of a claim under 11 U.S.C. § 523(a)(2)(A) are:

- (1) the debtor made representations;
- (2) that at the time the debtor knew were false;
- (3) the debtor made those representations with the intention and purpose of deceiving the creditor;

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Chapter 7

(4) the creditor justifiably relied on these representations; and

(5) the creditor sustained losses as a proximate result of the debtor's representations.

Am. Express Travel Related Servs. Co. v. Hashemi (In re Hashemi), 104 F.3d 1122, 1125 (9th Cir. 1996) (quoting Britton v. Price (In re Britton), 950 F.2d 602, 604 (9th Cir. 1991)). A debtor's knowledge and intent to deceive may be inferred by circumstantial evidence and from the debtor's conduct. Edelson v. Comm'r of Internal Revenue, 829 F.2d 828, 832 (9th Cir.1987); Donaldson v. Hayes (In re Hayes), 315 B.R. 579, 587 (Bankr.C.D.Cal.2004). The alleged misrepresentation must have occurred at the inception of the debt as an inducement for the debt. See New Falls Corp. v. Boyajian (In re Boyajian), 367 B.R. 138, 147 (B.A.P. 9th Cir.2007). In the Ninth Circuit, there is no requirement that the debtor "have received a direct or indirect benefit from his or her fraudulent activity in order to make out a violation of § 523(a)(2)(A)." Muegler v. Bening, 413 F.3d 980, 983-84 (9th Cir. 2005).

According to Plaintiff's Motion, Plaintiff's Complaint alleges that "the Debtor misrepresented the nature and extent of his business operations for the sole purpose of obtaining her money." (See Memorandum of Points and Authorities 5:4-5). Plaintiff is most likely referring to the following allegation: "At all times Debtor has used the assets of these corporations for his personal use without regard to the existence of the corporate entity," (See Complaint at ¶4). The Plaintiff provides more evidence of the Debtor's fraudulent representations in the form of her Declaration, alleging that the Debtor purported to be an experienced business man with expertise in creating and operating successful and profitable businesses. (See Declaration at ¶3). Plaintiff alleges that the Debtor promised her that he would operate the businesses in a profitable manner and, at a minimum, repay the Plaintiff for the total amount of her investment, \$175,000.00. (Declaration at ¶16). The Debtor also provided the Plaintiff with a "profit and loss" statement, which showed an anticipated profit level which would provide the funds sufficient to pay the Plaintiff back for her investment (See Exhibit 5 from Declaration). Debtor relied on these statements and later found out that Debtor's representations were false and intended to induce the Plaintiff to provide Debtor funds for his personal use. (Declaration at ¶19). Plaintiff has received no net profits, return on investment, or refund on initial investment.

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These allegations are sufficiently pled to establish the elements of fraud under § 523(a)(2)(A).

4. The possibility of a dispute considering material facts

No opposition to the motion has been filed. Therefore, there is no evidence before the Court to suggest that there is the possibility of a dispute considering material facts nor do the allegations of the Complaint contain discrepancies to indicate any inconsistency or dispute in the facts.

5. Sum of money at stake in the action

According to the Complaint, Motion, and Declaration, the Plaintiff invested \$50,000 in Double O Academy LLC for a 40% interest in the company and \$125,000 in Cal Arms, Inc. and Spygear4less, Inc. for an aggregate of 4,500 shares of stock in both. This information is supported by a copy of Plaintiff's check to Double O Academy LLC (See Exhibit 3 from Memo of Points and Authorities), a copy of the Double O Operating Agreement naming Plaintiff as the owner of a 40% interest, (See Exhibit 4 from Memo of Points and Authorities), and a copy of Plaintiff's 4,500 shares in Cal Arms, Inc. (See Exhibit 6 from Memo of Points and Authorities).

Therefore, the Plaintiff requests a non-dischargeable default judgment in the amount of \$175,000.00. This amount is not *de minimus* and weighs against the granting of default judgment.

6. The strong policy underlying the FRCP favoring decisions on the merits

The federal rules of civil procedure favor a decision on the merits. Here, the Motion though properly served on the Debtor, was unopposed. Additionally, prior to entering default judgment, the Court required that the Debtor submit a memorandum

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of points and authorities as well as evidence in support of the request for default judgment. The prove-up provided has sufficiently established that the Debtor is liable to the Plaintiff in the amount of \$175,000 and that the Debtor procured funds from the Plaintiff by means of fraud. Based on the foregoing, the Court's decision is on the merits and this factor weighs in favor of entering default judgment.

TENTATIVE RULING

The Court's tentative ruling is to GRANT the Motion and enter default and default judgment in favor of Plaintiff in the amount of \$175,000.

The Plaintiff must lodge a proposed order granting the motion and a proposed judgment.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

David Joe Strait

Represented By
Brian J Soo-Hoo

Defendant(s):

David Joe Strait

Pro Se

Movant(s):

Brenda Leong

Represented By
Marc E Grossman

Plaintiff(s):

Brenda Leong

Represented By
Marc E Grossman

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Trustee(s):

Lynda T. Bui (TR)

Pro Se

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6:14-21472 David Joe Strait

Chapter 7

Adv#: 6:14-01340 Leong v. Strait

#24.00 CONT Status Conference RE: [1] Adversary case 6:14-ap-01340. Complaint by Brenda Leong against David Joe Strait. false pretenses, false representation, actual fraud))

From: 2/8/17, 3/22/17, 6/21/17

Also #23

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Joe Strait

Represented By
Brian J Soo-Hoo

Defendant(s):

David Joe Strait

Pro Se

Plaintiff(s):

Brenda Leong

Represented By
Marc E Grossman

Trustee(s):

Lynda T. Bui (TR)

Pro Se

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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01163 Revere Financial Corporation v. Burns

#25.00 Motion to Dismiss Adversary Proceeding re First Amended Complaint

Also #26

EH__

Docket 36

***** VACATED *** REASON: CONTINUED TO 8/23/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Don Cameron Burns

Represented By
Don C Burns

Movant(s):

Don Cameron Burns

Represented By
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns

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CONT... Douglas Jay Roger

Chapter 7

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01163 Revere Financial Corporation v. Burns

#26.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01163. Complaint by Revere Financial Corporation against Don C. Burns. (12 (Recovery of money/property - 547 preference)),(11 (Recovery of money/property - 542 turnover of property)),(14 (Recovery of money/property - other)),(91 (Declaratory judgment))

From: 8/31/16, 11/2/16, 1/11/17, 3/8/17, 6/7/17

Also #25

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 8/23/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Don Cameron Burns

Represented By
Don C Burns

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske

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CONT...

Douglas Jay Roger

Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

Chapter 7

**United States Bankruptcy Court
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6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#27.00 CONT Motion For Summary Judgment/Memorandum of Points and Authorities on the Preclusive Effect of Plaintiff's State Court Judgment

From: 6/7/17, 7/12/17

Also #28

EH__

Docket 208

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi
Ryan F Thomas

Movant(s):

Charles Edward Schrader

Pro Se

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
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6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#28.00 CONT Status Conference RE: Adversary case 6:13-ap-01171. Complaint by Charles Edward Schrader against Narinder Sangha . willful and malicious injury
HOLDING DATE

From: 7/8/15, 11/4/15, 3/2/16, 12/14/16, 12/13/17, 4/5/17, 6/7/17, 7/12/17

Also #27

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi
Ryan F Thomas

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:17-11311 AHMAD JAMALEDDIN ALJINDI

Chapter 7

Adv#: 6:17-01051 ALJINDI v. US DEPARTMENT OF EDUCATION ET AL

#29.00 Motion to Expedite Discovery and Trial to Determine Dischargeability of Student Loans

EH__

Docket 14

***** VACATED *** REASON: ORDER/STIPULATION DISMISSING
CASE ENTERED 7/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

AHMAD JAMALEDDIN ALJINDI Pro Se

Defendant(s):

US DEPARTMENT OF Represented By
Elan S Levey

Movant(s):

AHMAD JAMALEDDIN ALJINDI Pro Se

Plaintiff(s):

AHMAD JAMALEDDIN ALJINDI Pro Se

Trustee(s):

Lynda T. Bui (TR) Pro Se

**United States Bankruptcy Court
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3:00 PM

6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:09-01235 DIAMOND v. Empire Partners, Inc., a California Corporation et

#30.00 CONT Status Conference re complaint
HOLDING DATE

From: 3/6/13, 6/5/13, 9/11/13, 11/13/13,12/18/13, 2/5/14, 3/12/14, 4/9/14,
4/16/14, 5/21/14, 8/27/14, 8/28/14, 9/10/14, 9/29/14, 11/10/14, 11/19/14,
1/21/15, 1/28/15, 2/19/15, 3/24/15, 5/28/15, 6/23/15, 8/12/15, 9/18/15, 10/6/15,
12/8/15, 1/20/16, 2/18/16, 3/23/16, 4/5/16, 4/13/16, 4/22/16, 6/6/16, 7/25/16,
10/3/16, 11/14/16, 1/23/17, 2/27/17, 4/24/17, 6/26/17

EH____

Docket 1

Tentative Ruling:

Party Information

Debtor(s):

Empire Land, LLC

Represented By
James Stang
Robert M Saunders
Michael I Gottfried
----- O'melveny & Myers
Dean A Ziehl
Jonathan A Loeb
P Sabin Willett
Richard K Diamond (TR)
Jeffrey Rosenfeld

Defendant(s):

DOES 1 through 100, inclusive

Pro Se

Empire Partners, Inc., a California

Represented By
David Loughnot

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CONT... Empire Land, LLC

Chapter 7

Jonathan A Loeb
Jeffrey Rosenfeld

Plaintiff(s):

RICHARD K. DIAMOND

Represented By
Richard S Berger
Michael I Gottfried
Aleksandra Zimonjic
Monica Rieder
John P Reitman
Peter M Bransten
Cynthia M Cohen
Roye Zur

Trustee(s):

Richard K Diamond (TR)

Represented By
Michael I Gottfried
Richard S Berger
Rodger M Landau
Richard K Diamond
Peter M Bransten
Aleksandra Zimonjic
Monica Rieder
Lisa N Nobles
Peter J Gurfein
Paul Hastings
Roye Zur
Amy Evans
Best Best & Krieger
Franklin C Adams
Thomas J Eastmond

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6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:10-01319 DIAMOND v. Empire Partners, Inc., a California Corporation et

#31.00 CONT Status Conference re complaint
HOLDING DATE

From: 3/6/13, 6/5/13, 9/11/13, 11/13/13,12/18/13, 2/5/14, 3/12/14, 4/9/14,
4/16/14, 5/21/14, 8/27/14, 8/28/14, 9/10/14, 9/29/14, 11/10/14, 11/19/14,
01/21/15, 1/28/15, 2/19/15, 3/24/15, 5/28/15, 6/23/15, 8/12/15, 9/18/15, 10/6/15,
12/8/15, 1/20/16, 2/18/16, 3/23/16, 4/5/16, 4/13/16, 4/22/16, 6/6/16, 7/25/16,
10/3/16, 11/14/16, 1/23/17, 2/27/17, 4/24/17

From: 6/26/17

EH____

Docket 1

Tentative Ruling:

Party Information

Debtor(s):

Empire Land, LLC

Represented By

James Stang

Robert M Saunders

Michael I Gottfried

----- O'melveny & Myers

Dean A Ziehl

Jonathan A Loeb

P Sabin Willett

Richard K Diamond (TR)

Jeffrey Rosenfeld

Defendant(s):

Paul Roman

Represented By

**United States Bankruptcy Court
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Wednesday, August 02, 2017

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CONT... Empire Land, LLC

Chapter 7

Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

O'Melveny & Myers, LLP

Represented By
Howard Steinberg
P Sabin Willett

Peter T. Healy

Represented By
Howard Steinberg
P Sabin Willett

Neil M Miller

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

Empire Partners, Inc., a California

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

James P Previti

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

Larry Day

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

Plaintiff(s):

RICHARD K DIAMOND

Represented By
Richard S Berger
Peter M Bransten
John P Reitman
Michael I Gottfried
Aleksandra Zimonjic

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CONT... Empire Land, LLC

Chapter 7

Monica Rieder
Cynthia M Cohen
Roye Zur

Trustee(s):

Richard K Diamond (TR)

Represented By
Michael I Gottfried
Richard S Berger
Rodger M Landau
Richard K Diamond
Peter M Bransten
Aleksandra Zimonjic
Monica Rieder
Lisa N Nobles
Peter J Gurfein
Paul Hastings
Roye Zur
Amy Evans
Best Best & Krieger
Franklin C Adams
Thomas J Eastmond

**United States Bankruptcy Court
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Wednesday, August 02, 2017

Hearing Room 303

3:00 PM

6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:10-01329 DIAMOND v. Empire Partners, Inc., a California Corporation et

#32.00 CONT Status Conference re complaint
(Defendant - Empire Partners, Inc) HOLDING DATE

From: 3/6/13, 6/5/13, 9/11/13, 11/13/13,12/18/13, 2/5/14, 3/12/14, 4/9/14,
4/16/14, 5/21/14, 8/27/14, 8/28/14, 9/10/14, 9/29/14, 11/10/14, 11/19/14,
1/21/15, 1/28/15, 2/19/15, 3/24/15, 5/28/15, 6/23/15, 8/12/15, 9/18/15, 10/6/15,
12/8/15, 1/20/16, 2/18/16, 3/23/16, 4/5/16, 4/13/16, 4/22/16, 6/6/16, 7/25/16,
10/3/16, 11/14/16, 1/23/17, 2/27/17, 4/24/17, 6/26/17

EH____

Docket 1

Tentative Ruling:

Party Information

Debtor(s):

Empire Land, LLC

Represented By
James Stang
Robert M Saunders
Michael I Gottfried
----- O'melveny & Myers
Dean A Ziehl
Jonathan A Loeb
P Sabin Willett
Richard K Diamond (TR)
Jeffrey Rosenfeld

Defendant(s):

Previti Realty Fund, L.P.

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, August 02, 2017

Hearing Room 303

3:00 PM

CONT... Empire Land, LLC

Chapter 7

The James Previti Family Trust

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

Empire Partners, Inc., a California

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

James P Previti

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

Plaintiff(s):

RICHARD K DIAMOND

Represented By
Richard S Berger
Michael I Gottfried
Aleksandra Zimonjic
Monica Rieder
John P Reitman
Peter M Bransten
Cynthia M Cohen
Royce Zur

Trustee(s):

Richard K Diamond (TR)

Represented By
Michael I Gottfried
Richard S Berger
Rodger M Landau
Richard K Diamond
Peter M Bransten
Aleksandra Zimonjic
Monica Rieder
Lisa N Nobles
Peter J Gurfein
Paul Hastings
Royce Zur
Amy Evans

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, August 02, 2017

Hearing Room 303

3:00 PM

CONT... Empire Land, LLC

Best Best & Krieger
Franklin C Adams
Thomas J Eastmond

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:15-11188 Claudie Gene West

Chapter 13

#1.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Claudie Gene West

Represented By
Todd L Turoci

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:16-19962 Fonda Cormier

Chapter 7

#2.00 Motion to vacate Conversion of Case From Chapter 13 to Chapter 7 and Supporting Declaration

EH__

Docket 42

Tentative Ruling:

8/3/17

BACKGROUND

On November 9, 2016, Fonda Cormier ("Debtor") filed a Chapter 13 voluntary petition. On December 28, 2016, Debtor's Chapter 13 plan was confirmed, and was modified twice subsequently.

On June 30, 2017, Debtor filed a notice of conversion to Chapter 7, and the case was converted approximately two hours and fifteen minutes later. Approximately one hour and thirty minutes later, Debtor filed a motion to vacate the conversion order. The motion was filed on negative notice. On July 20, 2017, the Court set the matter for hearing.

Debtor's argument is, essentially, that Debtor changed its mind and no longer wants to be in Chapter 7. Specifically, Debtor states that after it filed the notice of conversion it had discussions with Trinity Financial, a lienholder on Debtor's principal residence, and learned that Trinity Financial would likely file a motion for relief from stay if the case were converted to Chapter 7.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

CONT... Fonda Cormier

Chapter 7

DISCUSSION

As a preliminary matter, the proof of service included in Debtor's motion is not signed, and Debtor has not served all parties in interest pursuant to Local Rule 1017.

Additionally, Debtor's motion contains no legal standard or analysis. Relief from a judgment or order is governed by Fed. R. Civ. P. Rule 60, incorporated into bankruptcy proceedings by Fed. R. Bankr. P. Rule 9024. Debtor has not provided any argument relating to that standard.

Furthermore, the declaration of Debtor's attorney appears to misrepresent the factual situation. First, the reasons for Debtor converting to Chapter 7 are not given. The primary argument presented by Debtor in support of this motion is that counsel learned, after filing a notice of conversion and having further discussions with Trinity Financial, that Trinity Financial would likely file a motion for relief from stay if the case was converted to Chapter 7. Trinity Financial had, however, in fact filed a motion for relief from stay on May 9, 2017, and an order approving the stipulation of the parties was entered on June 27, 2017. Section 10 of that order states: "This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code." The parties chose not to include language that would provide for relief from stay upon conversion of the case. Therefore, it is unclear how the conversion of the case could have any effect on the automatic stay as it relates to Trinity Financial.

As an aside, the Court notes that Debtor is ineligible for a Chapter 7 discharge under § 727(a)(8) by virtue of a Chapter 7 discharge on September 25, 2009.

TENTATIVE RULING

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

CONT... Fonda Cormier

Chapter 7

Given the legal and factual deficiencies of the motion, in addition to the motion's improper service, the Court will DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Fonda Cormier

Represented By
Phillip Myer

Movant(s):

Fonda Cormier

Represented By
Phillip Myer

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-14056 Rafael Chavez Perez and Catalina Chavez

Chapter 13

#3.00 CONT Confirmation of Chapter 13 Plan

From: 6/22/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rafael Chavez Perez

Represented By
Manfred Schroer

Joint Debtor(s):

Catalina Chavez

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-14186 Joshua Aguilar and Cynthia Rodriguez

Chapter 13

#4.00 CONT Confirmation of Chapter 13 Plan

From: 6/22/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joshua Aguilar

Represented By
Paul Y Lee

Joint Debtor(s):

Cynthia Rodriguez

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-14189 Gabriel Valencia, Jr. and Maricela Valencia

Chapter 13

#5.00 CONT Confirmation of Chapter 13 Plan

From: 6/22/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gabriel Valencia Jr.

Represented By
Paul Y Lee

Joint Debtor(s):

Maricela Valencia

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-14292 Lubna Shiraz Ahmed

Chapter 13

#6.00 CONT Confirmation of Chapter 13 Plan

From: 7/6/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lubna Shiraz Ahmed

Represented By
Joshua L Sternberg

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-14908 Joan Eleanor Demiany

Chapter 13

#7.00 CONT Confirmation of Chapter 13 Plan

From: 7/27/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joan Eleanor Demiany

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-15102 Gwendolyn Washington

Chapter 13

#8.00 Motion to Avoid JUNIOR LIEN with Option One Mortgage Corp Serviced By
Real Time Resolutions Inc

Also #9

EH__

Docket 21

Tentative Ruling:

Hearing Date: 8/3/17

Summary of the Motion:

Notice: Proper

Opposition: None

Address: 977 Allegre Dr., Corona, CA 92879

First trust deed: Wells Fargo Bank NA in the amount of \$ 606,774.64 (mortgage statement dated 4/17/17; mortgage statement appears to state that outstanding balance is \$570,766.59)

Second trust deed (to be avoided): Option One Mortgage Corporation in the amount of \$ 287,194.68 (proof of claim from previous case dated July 22, 2016)

Fair market value (per authenticated appraisal): \$ 410,000

TENTATIVE

The Court is inclined to GRANT the motion, avoiding the junior lien of Option One Mortgage Corporation upon receipt of a Chapter 13 discharge.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Gwendolyn Washington

Represented By
Julie J Villalobos

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

CONT... Gwendolyn Washington

Chapter 13

Movant(s):

Gwendolyn Washington

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-15102 Gwendolyn Washington

Chapter 13

#9.00 CONT Confirmation of Chapter 13 Plan

From: 7/27/17

Also #8

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gwendolyn Washington

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-15285 Trevor D. Washington and Sandra Washington

Chapter 13

#10.00 CONT Confirmation of Chapter 13 Plan

From: 7/27/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Trevor D. Washington

Represented By
Julie J Villalobos

Joint Debtor(s):

Sandra Washington

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-15300 Robert Douglas Lawson and Cindy Louise Lawson

Chapter 13

#11.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Douglas Lawson

Represented By
Gary S Saunders

Joint Debtor(s):

Cindy Louise Lawson

Represented By
Gary S Saunders

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-15307 Naima Namiah Narumi Chambers

Chapter 13

#12.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 7/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Naima Namiah Narumi Chambers Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-15323 Jose Guadalupe Rodriguez

Chapter 13

#13.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 7/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Guadalupe Rodriguez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-15343 Jose Gabriel Sahagun, Jr.

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Gabriel Sahagun Jr.

Represented By
Richard G Heston

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-15344 Elena Arriaga

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 7/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elena Arriaga

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-15372 Kathleen M Banuelos

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 7/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kathleen M Banuelos

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-15417 Meghan McConaghy

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Meghan McConaghy

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-15423 Alex Perez

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 7/17/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Perez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-15427 Cary Lee Surface and Amber Dawn Surface

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cary Lee Surface

Represented By
Lionel E Giron

Joint Debtor(s):

Amber Dawn Surface

Represented By
Lionel E Giron

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-15475 Shane Morgan

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shane Morgan

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-15490 Oscar Avila

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 7/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oscar Avila

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:30 PM

6:17-15524 Thanaa Victor Fransis

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thanaa Victor Fransis

Represented By
Rabin J Pournazarian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:13-21974 Carlos Enrique Mendoza and Michelle Lea Mendoza

Chapter 13

#23.00 Trustee's Motion to Dismiss Case

EH__

Docket 106

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carlos Enrique Mendoza

Represented By
John F Brady
Lisa H Robinson

Joint Debtor(s):

Michelle Lea Mendoza

Represented By
John F Brady
Lisa H Robinson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:13-30066 Mitchell Jeffrey Summers and Terra Carolina Summers

Chapter 13

#24.00 Trustee's Motion to Dismiss Case

EH__

Docket 117

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mitchell Jeffrey Summers

Represented By
Lisa H Robinson
John F Brady

Joint Debtor(s):

Terra Carolina Summers

Represented By
Lisa H Robinson
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:14-11816 Arnel De Castro and Anna De Castro

Chapter 13

#25.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 67

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/27/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arnel De Castro

Represented By
Paul Y Lee

Joint Debtor(s):

Anna De Castro

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:14-22951 Wilfred David Pascual

Chapter 13

#26.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 49

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Wilfred David Pascual

Represented By
Lisa H Robinson
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:14-23678 Liliana Gomez

Chapter 13

#27.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 103

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liliana Gomez

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:14-24314 Timm Bruce Bennett

Chapter 13

#28.00 Trustee's Motion to Dismiss Case

EH__

Docket 68

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timm Bruce Bennett

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:15-14501 Vonetta M Mays

Chapter 13

#29.00 Trustee's Motion to Dismiss Case

EH__

Docket 145

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vonetta M Mays

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:15-20222 Marquis George Powell and Judy Ann Powell

Chapter 13

#30.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 90

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/31/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marquis George Powell Pro Se

Joint Debtor(s):

Judy Ann Powell Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:15-20628 Robert R. Gentile

Chapter 13

#31.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert R. Gentile

Represented By
Michael Smith
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:15-22294 Jonathan William Nicastro

Chapter 13

#32.00 Trustee's Motion to Dismiss Case

EH__

Docket 88

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jonathan William Nicastro

Represented By
Rabin J Pournazarian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:16-12347 Jose Luis Ceballos and Edelmira Castro

Chapter 13

#33.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 72

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Luis Ceballos

Represented By
David Lozano

Joint Debtor(s):

Edelmira Castro

Represented By
David Lozano

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:16-14084 Martin Linares and Elvia Linares

Chapter 13

#34.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 47

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martin Linares

Represented By
Michael Smith
Craig K Streed

Joint Debtor(s):

Elvia Linares

Represented By
Michael Smith
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:16-15678 Nicholas Asamo

Chapter 13

#35.00 Trustee's Motion to Dismiss Case

EH__

Docket 36

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/19/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nicholas Asamo

Represented By
Stephen S Smyth
William J Smyth

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:16-16179 Raul Navarrette and Leslie Navarrette

Chapter 13

#36.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 31

*** VACATED *** REASON: WITHDRAW OF MOTION FILED 7/26/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raul Navarrette

Represented By
Paul Y Lee

Joint Debtor(s):

Leslie Navarrette

Represented By
Paul Y Lee

Movant(s):

CitiMortgage, Inc.

Represented By
William F McDonald III
Cheryl A Knapmeyer
Carol M Turek

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:16-17084 Katrina Renee McDowell

Chapter 13

#37.00 Trustee's Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 81

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Katrina Renee McDowell

Represented By
S Renee Sawyer Blume
Christopher J Langley
Matthew D Resnik

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:16-19396 Pamela Lynn King

Chapter 13

#38.00 Trustee's Motion to Dismiss Case

EH__

Docket 22

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pamela Lynn King

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:16-19869 Sonia Galicia

Chapter 13

#39.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 23

***** VACATED *** REASON: WITHDRAWL OF MOTION FILED
7/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sonia Galicia

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:16-20163 Sandra M. Hankins

Chapter 13

#40.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 22

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sandra M. Hankins

Represented By
Michael Smith
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:16-20775 Raul Montez and Adelaida Montez

Chapter 13

#41.00 Trustee's Motion to Dismiss Case

EH__

Docket 24

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raul Montez

Represented By
Paul Y Lee

Joint Debtor(s):

Adelaida Montez

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 03, 2017

Hearing Room 303

12:31 PM

6:16-21233 Grady Singleton, III and Michelle Singleton

Chapter 13

#42.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Grady Singleton III

Represented By
Paul Y Lee

Joint Debtor(s):

Michelle Singleton

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 15, 2017

Hearing Room 303

4:00 PM

6:14-18549 Matthew Joseph Pautz and Alice Louise Pautz

Chapter 7

#1.00 Order to Show Cause re Bodily Detention Order

EH__

Docket 135

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Matthew Joseph Pautz

Represented By
Stephen D Brittain

Joint Debtor(s):

Alice Louise Pautz

Represented By
Stephen D Brittain

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Samuel J Romero

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, August 16, 2017

Hearing Room 303

11:00 AM

6:15-15514 Manuel Jose Saldana

Chapter 7

#1.00 CONT Motion to disallow Claimed Homestead Exemption

From: 3/1/17, 4/26/17, 6/21/17

EH__

Docket 55

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/28/17**

Party Information

Debtor(s):

Manuel Jose Saldana

Represented By
Robert G Uriarte

Trustee(s):

Lynda T. Bui (TR)

Represented By
Leonard M Shulman
Elyza P Eshaghi

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, August 16, 2017

Hearing Room 303

11:00 AM

6:17-15816 Integrated Wealth Management Inc

Chapter 7

#2.00 Status Conference RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual

EH__

Docket 1

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

11:00 AM

6:16-17768 Dispatch Transportation LLC

Chapter 7

#1.00 CONT Motion for 2004 Examination -- Motion of USA Waste of California, Inc. for an Order Authorizing the Examination of Craig Johnson and the Issuance of Subpoenas Duces Tecum to Commodity Trucking Acquisition, LLC and Craig Johnson Pursuant to Fed.R. Bankr.P. 2004
(Holding Date)

FROM: 5/3/17, 5/17/17, 5/31/17, 6/28/17, 7/31/17

EH__

Docket 46

***** VACATED *** REASON: ORDER ENTERED 8/16/17**

Tentative Ruling:

06/28/2017

BACKGROUND

On August 30, 2016 ("Petition Date"), Dispatch Transportation LLC ("Debtor") filed its petition for chapter 7 relief. Charles Daff is the duly appointed chapter 7 trustee ("Trustee").

On April 6, 2017, USA Waste of California, Inc. ("USA Waste") filed its Motion for an Order Authorizing the Examination of Craig Johnson and the Issuance of Subpoenas Duces Tecum to Commodity Trucking Acquisition, LLC ("CTA") and Craig Johnson Pursuant to Fed.R. Bankr.P. 2004 ("Motion"). USA Waste brings its Motion on the basis that it believes that the Debtor's case was filed in bad faith. Specifically, it appears that USA Waste believes the Debtor's asserts were transferred prepetition to CTA so that the Debtor could then file bankruptcy and discharge debts without having to liquidate its assets. In support, USA Waste asserts that CTA is run by the same managers, at the same location, with the same assets, and with representation of the same counsel as the Debtor.

The initially scheduled hearing was continued by stipulation of the parties and was subsequently continued by the Court to June 28, 2017. On May 3, 2017, oppositions to the Motion were filed by CTA and by Craig Johnson. A reply to the oppositions was filed on May 24, 2017.

**United States Bankruptcy Court
Central District of California
Riverside
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Thursday, August 17, 2017

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11:00 AM

CONT... Dispatch Transportation LLC

Chapter 7

USA Waste asserts by its Motion that under the broad scope of FRBP 2004, examination of Craig Johnson and subpoena of records in CTA's and Craig Johnson's possession is justified because these parties have access to information that USA Waste requires to evaluate the Debtor's assets, liabilities, and prepetition activities in incurring the liabilities of the estate. (Motion at 3:25-28). Additionally, the initial Motion included a declaration from the Trustee indicating that he waived the Debtor's attorney-client privilege as to communications between the Debtor and Craig Johnson for purposes of the requested examinations. (Daff Decl. ¶3).

In opposition to the Motion, CTA generally asserts that the Motion should be denied because: (1) the Motion is moot because the Trustee retracted the waiver of the Debtor's attorney-client privilege with Mr. Johnson; (2) CTA obtained the Debtor's assets through a "commercially reasonable" Article 9 sale; (3) the Motion is itself only an attempt by USA Waste to obtain privileged information via the bankruptcy process that it could not otherwise obtain and use in connection with currently stayed state court litigation; (4) USA Waste is hoping to obtain privileged information in preparation for the filing of suit against CTA. The Court's Docket reflects that on May 3, 2017, the Trustee filed his Notice of Withdrawal of Waiver of Privilege. (Docket No. 59).

The Manning Pit dispute

In 2004, pursuant to a settlement agreement, the City of Irwindale was bound by a "Prioritization" provision which set forth the rules regarding which city quarries could be filled, when they could be filled, and by whom. In 2004, USA Waste obtained rights to fill a city quarry referred to by the parties as the "Arrow Pit". On or about 2007, the Debtor obtained a contract to fill a separate quarry – the "Manning Pit." A dispute subsequently arose about whether the Debtor's contract and work violated the Prioritization provision.

The Article 9 Sale

CTA alleges that it acquired the Debtor's assets via an Article 9 sale after the Debtor defaulted on debts owed to its first priority secured creditor, Comerica Bank. CTA asserts that Comerica effectuated a foreclosure sale on September 14, 2011 under Michigan law at which CTA was the buyer. CTA purchased the Debtor's assets for \$12 million, which included its equipment, trade names, business names, leases, contracts etc. CTA notes that the individuals who shared management or ownership

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Thursday, August 17, 2017

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CONT... Dispatch Transportation LLC

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interests in both the Debtor and CTA did so because they made capital contributions for such interests. In support of their assertion that CTA's purchase of the Debtor's assets was proper, CTA and Mr. Johnson point to the decision of the San Bernardino Superior Court in which a different party attempted to bring suit against CTA as an alleged alter ego of the Debtor, and in which the Superior Court found no alter ego liability. This Court, however, notes that the decision of the Superior Court may have no preclusive effect in this case.

The Basis for USA Waste's claim against the Debtor

In 2013, USA Waste commenced a lawsuit against the Debtor for Intentional Interference with Contractual Relations and for Unfair Competition. Discovery was conducted and a motion for summary judgment was filed by the Debtor which was denied by the trial court. The Superior Court scheduled trial for August 2016 but then trailed the trial to September 2016. The instant petition was filed on August 30, 2016 – staying USA Waste's litigation against the Debtor.

DISCUSSION

Bankruptcy Rule 2004 is a broadly construed discovery device which permits any party in interest in a bankruptcy proceeding to move for a court order to examine any entity so long as the examination relates to "acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed.R.Bankr.P. 2004(b). The scope of inquiry permitted under a Rule 2004 examination is generally very broad and can "legitimately be in the nature of a 'fishing expedition.'" *In re Wilcher*, 56 B.R. 428, 433 (Bankr.N.D.Ill.1985). Such an examination, however, cannot be " 'used for purposes of abuse or harassment' and it 'cannot stray into matters which are not relevant to the basic inquiry.'" *In re Table Talk*, 51 B.R. 143, 145 (Bankr.D.Mass.1985) (quoting *In re Mittco, Inc.*, 44 B.R. 35, 36 (Bankr.E.D.Wis.1984)). If the party to be examined makes a motion to quash a Rule 2004 subpoena, the examiner must show that there is good cause for taking the requested discovery. *In re Wilcher*, 56 B.R. at 434.

The Court now turns to its analysis of whether production and examination under Rule 2004 are warranted:

As to CTA, USA Waste specifically requests production of the following:

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CONT... Dispatch Transportation LLC

Chapter 7

Request 1

"... all data storage devices, including hard drives, containing information or documents concerning the Manning Pit, any former assets of the Debtor that were acquired by CTA, and/or the division of CTA referred to as "Dispatch Transportation" by CTA or CTA's agents, employees or managers such as Kim Pugmire."

The Court disagrees with CTA's objection that the requested documents do not relate to the administration of the bankruptcy estate. Specifically, the information regarding the Manning Pit is directly related to USA Waste's claim in the Debtor's bankruptcy. The remaining request appears to concern USA Waste's contention that CTA and the Debtor colluded to shield assets from USA Waste and to prevent it from being able to establish its claim against the Debtor. On this point, based on the evidence in the record, it does not appear that the Superior Court's prior adjudication of the Article 9 sale issues precludes USA Waste from potentially asserting alter ego claims against CTA, and its officers/managers or owners in connection with the Debtor's bankruptcy case for the benefit of the estate's creditors. However, the Court is inclined to limit the request to providing copies of the relevant documents rather than requiring provision of actual devices or hard drives.

As to Craig Johnson, USA Waste requests:

Request 1

All e-mails or other documents (excluding those documents which are part of the public record of proceedings) that you authored, transmitted, or received on behalf of Debtor concerning USA Waste of California, Inc. v. City of Irwindale, et al., Los Angeles Superior Court Case No. KC066276

Request 2

All documents for which Debtor invoked the attorney-client privilege in USA Waste of California, Inc. v. City of Irwindale, et al., Los Angeles Superior Court Case No. KC066276 as reflected in the Privilege Log attached hereto as Exhibit A.

Request 3

All documents concerning the Manning Pit.

Request 4

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CONT... Dispatch Transportation LLC

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All documents concerning the division of CTA referred to as "Dispatch Transportation" by CTA or CTA's agents, employees or managers such as Kim Pugmire.

As to Craig Johnson, the Court is unpersuaded that the Pugmire testimony constitutes a waiver of the attorney-client privilege. *Hernandez v. Tanninen*, 604 F.3d 1095, 1100 (9th Cir. 2010). Disclosing a privileged communication or raising a claim that requires disclosure of a protected communication results in waiver as to all other communications on the same subject. *United States v. Nobles*, 422 U.S. 225, 239-40, 95 S.Ct. 2160, 45 L.Ed.2d 141 (1975); *Weil v. Inv./Indicators, Research & Mgmt.*, 647 F.2d 18, 24 (9th Cir.1981) ("[V]oluntary disclosure of the content of a privileged attorney communication constitutes waiver of the privilege as to all other such communications on the same subject."); *Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th Cir.1992) ("Where a party raises a claim which in fairness requires disclosure of the protected communication, the privilege may be implicitly waived."). The Court, having reviewed Exhibit E of the Pugmire testimony, finds that Mr. Pugmire was asked and frequently responded to general questions regarding who was representing the Debtor as to specific transactions, to which he frequently made reference to Mr. Johnson. However, it is not clear from the general questioning that Mr. Pugmire ever uttered a statement that would specifically waive the attorney-client privileges attached to communications with Mr. Johnson. Moreover, the rule regarding waiver as to disclosed communications is limited to "communications on the same subject." *Nobles* at 439-40. However, here, USA Waste's examination requests are broad and include no limitations as to subject, or otherwise. At a minimum, to prevail USA Waste would need to point to each specific statement in the deposition testimony that it contends effectuates a privilege waiver and separately identify which subject is not protected by the privilege. Having failed to go through this exercise, the Court finds the general references to Mr. Johnson's representation and to Mr. Pugmire's general statements regarding his interactions with Mr. Johnson unpersuasive as a basis to conclude that there has been a waiver of the attorney-client privilege.

Based on the foregoing, the Court finds that USA Waste's Motion must be denied as to all requests made to Mr. Johnson to the extent that the attorney-client privilege is asserted, so specifically as to requests 1 and 2. However, the Court agrees that the third and fourth requests generally request information regarding the Manning

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CONT... Dispatch Transportation LLC

Chapter 7

Pit and CTA's "Dispatch Transportation" division, which appears relevant. Mr. Johnson is free to provide a privilege log in response.

TENTATIVE RULING

The Motion is GRANTED IN PART and DENIED IN PART.

GRANTED (but limited) as to USA Waste's request to CTA for documents related to the Manning Pit, and to documents related to CTA's purchase of the Debtor's assets.

DENIED as to USA Waste's 1st and 2nd requests to Craig Johnson, and GRANTED as to requests 3 and 4.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Dispatch Transportation LLC

Represented By
Leonard M Shulman
Elyza P Eshaghi

Movant(s):

USA Waste of California, Inc.

Represented By
Paul J Laurin

Trustee(s):

Charles W Daff (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
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Courtroom 303 Calendar**

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Hearing Room 303

12:30 PM

6:11-43583 Richard H Brown, Jr.

Chapter 13

Adv#: 6:17-01029 Cohen v. Bank of America, NA et al

#2.00 CONT Status Conference Re Complaint by Amrane Cohen against Bank of America, NA, Ocwen Loan Servicing, LLC, New Penn Financial LLC dba Shellpoint Mortgage Servicing: Nature of Suit: 14 - Recovery of money/property - other, 02 - Other: e.g. other actions that would have been brought in state court if unrelated to bankruptcy, 91 - Declaratory judgment

From: 4/6/17, 5/11/17, 6/8/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard H Brown Jr.

Represented By
Gary J Holt

Defendant(s):

Ocwen Loan Servicing, LLC

Pro Se

Bank of America, NA

Pro Se

Plaintiff(s):

Amrane Cohen

Pro Se

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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Thursday, August 17, 2017

Hearing Room 303

12:30 PM

6:12-19824 John Walter Green and Janice Sotto Lopez Green

Chapter 13

#3.00 Motion RE: Objection to Claim Number 5 by Claimant JPMorgan Chase Bank, N.A..

EH__

Docket 72

Tentative Ruling:

08/17/17

Claim No.: 5-2

Claimant: JPMorgan Chase ("Claimant")

Claim Amount: \$61,418.32

Objection:

The Debtors' case was commenced on April 20, 2012. On July 24, 2012, the Claimant filed Claim 5-1 in the amount of \$0.00. The Debtors' chapter 13 plan was confirmed on August 8, 2012. On December 8, 2014, the Claimant filed a notice of withdrawal of proof of claim indicating that its withdrawal was "without prejudice to refile at a later date". (Docket No. 51). On October 14, 2015, Claimant filed an "amended" Claim No. 5-2 asserting a claim in the amount of \$61,418.32.

On May 24, 2017, the chapter 13 trustee, Amrane Cohen (the "Trustee"), filed objection to Claim No. 5 (the "Objection"). The Trustee objects on the grounds that: (1) the Objection was extinguished when withdrawn; and (2) the "amended" Claim No. 5-2 is untimely because it was filed after the claims bar date of August 29, 2012.

Claimant, for its part, despite having been properly served with the Objection has failed to file any opposition or response.

Discussion:

As a threshold matter, the Court deems the failure of the Claimant to file a response or opposition as consent to sustaining of the Objection. LBR 9013-1(f)

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CONT... John Walter Green and Janice Sotto Lopez Green

Chapter 13

Federal Rule of Bankruptcy Procedure 3001(f) and 11 U.S.C. § 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they prima facie establish the claim. *In re Holm*, 931 F.2d 620 (9th Cir. 1991).

Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ***ultimate burden of persuasion is always on the claimant***. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more. *Id.* at 623 (emphasis added).

Further, "creditors have an obligation to respond to formal or informal requests for information." *Id.* at 436. The request for information can "come in the form of a claims objection, if it is sufficiently specific about the information required." *Id.*

The Trustee asserts correctly that the Advisory Committee Notes to FRBP 3006, which governs withdrawal of claims, indicates that it has been generally held that FRCP 41 regarding dismissal of actions, governs the withdrawal of a proof of claim. Pursuant to FRCP 41, dismissal of a complaint before an answer is filed (or in the bankruptcy context, before the filing of an objection to claim or related complaint), is without prejudice. However, nothing in rule 41 or FRBP 3006 indicates that the claims bar deadline is tolled by a withdrawal nor has the Claimant filed any response or opposition indicating any legal basis permitting the filing of a late-filed claim. Here, the Court finds that when Claimant withdrew Claim No. 5-1, that claim was terminated. When the Claimant filed the "amended" claim, the claims bar deadline had lapsed. Absent authority indicating that the "amended" claim relates back to the original (but withdrawn claim), the Court is inclined to treat the amended Claim No. 5-2 as a new claim which does not relate back to the original Claim No. 5-1 and which was filed by the Claimant beyond the deadline for filing proofs of claim.

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CONT... John Walter Green and Janice Sotto Lopez Green

Chapter 13

Tentative Ruling

Based on the foregoing, the Court SUSTAINS the Trustee's Objection. Claim No. 5-2 shall be disallowed in its entirety as untimely.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

John Walter Green

Represented By
Marc A Duxbury

Joint Debtor(s):

Janice Sotto Lopez Green

Represented By
Marc A Duxbury

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
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Judge Mark Houle, Presiding
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Thursday, August 17, 2017

Hearing Room 303

12:30 PM

6:12-23206 Donald Vinson Frantz and Donna Peck Frantz

Chapter 13

#4.00 Trustee's Motion to Dismiss Case Due to Material Default

Also #5

EH__

Docket 116

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald Vinson Frantz

Represented By
Jenny L Doling

Joint Debtor(s):

Donna Peck Frantz

Represented By
Jenny L Doling

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
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Thursday, August 17, 2017

Hearing Room 303

12:30 PM

6:12-23206 Donald Vinson Frantz and Donna Peck Frantz

Chapter 13

#5.00 Motion to Avoid Junior Lien with The Bank of New York Mellon, as Trustee for CWHEQ Home Equity Loan Asset Backed Certificates, Series 2006-S9 and Nationstar Mortgage, LLC (Servicer)

Also #4

EH__

Docket 121

Tentative Ruling:

08/17/2017

Summary of the Motion:

Notice: Proper

Opposition: Trustee Comments recommending Disapproval

Address: 80781 Canyon Trail, Indio, CA 92201

First trust deed: \$373,320.10 (Proof of Claim No. 7)

Second trust deed (to be avoided): \$46,392.63 (Proof of Claim No. 8)

Fair market value: \$197,500 (Debtor Decl. ¶5)

TENTATIVE

The Debtors' case was filed on May 30, 2012. On August 21, 2012, the Debtors' plan was confirmed. The plan provided, in pertinent part, "Bank of America, N.A.: Debtor (s) intend to avoid lien." (Plan at V.F. Miscellaneous provisions). A proof of claim indicating that the secured junior lien scheduled by Debtors as BOFA was actually held by Bank of New York Mellon. (Proof of Claim No. 8, filed 10/17/2012).

On May 30, 2017, the Trustee filed a Motion to Dismiss due to Material Default based on the Debtors' failure to file the lien avoidance motion indicated in the plan.

In response, five years after they said they would, Debtors filed their Motion to Avoid the Lien of Bank of New York Mellon ("Motion"). The Motion seeks to avoid the lien of Bank of New York Mellon ("Bank"). The Motion is deficient in that it contains insufficient evidence of the fair market value of the Property which is supported only

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CONT... Donald Vinson Frantz and Donna Peck Frantz

Chapter 13

by the opinion (without foundation) of the Debtor.

The Debtors assert that they should be permitted to avoid the lien at issue because the confirmed plan contemplated such avoidance and because the Bank agreed to its treatment at the time (the Bank's counsel has since indicated that the servicer has changed since the time of the Bank's original consent and as such no stipulation is currently forthcoming). Separately, Debtor underscores that the Bank has not opposed the Motion and that such failure to file opposition should be deemed consent.

On August 4, 2017, the Trustee filed comments recommending disapproval of the Motion based on (1) unreasonable delay by the Debtors; (2) the plan would be rendered infeasible by an order avoiding the lien of the Bank (it appears that Trustee treated the Bank's claim as secured due to the lack of an order avoiding the lien and has thus only paid the Bank's arrears through the plan (or \$1,924.18), however, if the lien is now avoided, the estate would need to pay 69.64% of the Bank's claim or approx. \$29,043.33, plus trustee's fees; (3) the plan is already in month 62; (3) between 2012 and 2014, Debtors received Proof of Claim No. 8, and "several notices" from the Trustee indicating that the Trustee was only making the payments on the Bank's arrears through the plan but delayed until the end of the plan to take action.

In Reply, the Debtors assert that (1) the Trustee has no standing to object to the Motion; (2) the Bank has already received more than it would have received as an unsecured creditor (presumably, had the Trustee not increased the dividend to the other creditors based on the failure by Debtors to timely avoid the Bank's lien); and (3) the Trustee never sought to modify the chapter 13 plan to propose a higher dividend be paid to unsecured creditors.

Here, the Court has reviewed the holding in *In re Chagolla*, 544 B.R. 676 (9th Cir. BAP 2016) and finds that it persuasively provides support for the untimely filing of a motion to avoid lien. Moreover, where here, the Motion appears to have been filed prior to the entry of discharge or the closing of the case, avoidance appears to be legally permissible. Additionally, as pointed out by the Debtors, the Bank has filed no opposition or response. However, the Motion is insufficient on its face because there is insufficient evidence as to the fair market value of the Property.

Separately, although the Trustee's comments do not provide a sufficient basis

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12:30 PM

CONT... Donald Vinson Frantz and Donna Peck Frantz Chapter 13

upon which to deny the Motion itself, the Trustee's may suffice to support dismissal of the case, which the Court shall consider separately in connection with Matter No. 4.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Donald Vinson Frantz

Represented By
Jenny L Doling

Joint Debtor(s):

Donna Peck Frantz

Represented By
Jenny L Doling

Movant(s):

Donna Peck Frantz

Represented By
Jenny L Doling
Jenny L Doling

Donald Vinson Frantz

Represented By
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:30 PM

6:12-34481 James J Alvarado and Pamela P Alvarado

Chapter 13

#6.00 Application for Compensation/Supplemental Fees for Sundee M Teeple,
Debtor's Attorney, Fee: \$600.00

EH__

Docket 106

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James J Alvarado

Represented By

Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Pamela P Alvarado

Represented By

Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Movant(s):

Pamela P Alvarado

Represented By

Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Michael Smith
Michael Smith
Michael Smith
Michael Smith
Sundee M Teeple

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:30 PM

CONT... James J Alvarado and Pamela P Alvarado

Chapter 13

Sundee M Teeple
Sundee M Teeple
Sundee M Teeple

James J Alvarado

Represented By

Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Michael Smith
Michael Smith
Michael Smith
Michael Smith
Michael Smith
Sundee M Teeple
Sundee M Teeple
Sundee M Teeple
Sundee M Teeple
Sundee M Teeple

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By

Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:30 PM

6:12-32571 Yvonne Alaniz

Chapter 13

#7.00 Motion to suspend payments

EH__

Docket 75

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Yvonne Alaniz

Represented By

Art Hoomiratana - SUSPENDED -

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By

Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:31 PM

6:12-21687 Larry J Neilsen and Brenda J Neilsen

Chapter 13

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

EH__

Docket 88

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Larry J Neilsen

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Brenda J Neilsen

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:31 PM

6:12-21688 Ginger L Kearney

Chapter 13

#9.00 Trustee's Motion to Dismiss Case Due to Material Default

EH__

Docket 39

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
6/15/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ginger L Kearney

Represented By
Stephen B Mashney

Movant(s):

Amrane (RS) Cohen (TR)

Pro Se

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:31 PM

6:12-23627 Michael L Anderson

Chapter 13

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

From: 6/8/17

EH__

Docket 140

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael L Anderson

Represented By
Javier H Castillo

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:31 PM

6:12-25054 James Edward Bierly and Betty Ann Bierly

Chapter 13

#11.00 Trustee's Motion to Dismiss Case

EH__

Docket 90

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Edward Bierly

Represented By
Hector C Perez

Joint Debtor(s):

Betty Ann Bierly

Represented By
Hector C Perez

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, August 17, 2017

Hearing Room 303

12:31 PM

6:12-27191 Jess G. Caudillo and Patricia D. Caudillo

Chapter 13

#12.00 Trustee's Motion to Dismiss Case

EH__

Docket 63

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/25/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jess G. Caudillo

Represented By
Dale Parham - INACTIVE -
Sundee M Teeple

Joint Debtor(s):

Patricia D. Caudillo

Represented By
Dale Parham - INACTIVE -
Sundee M Teeple

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:31 PM

6:12-29475 Jesus Sandoval

Chapter 13

#13.00 Trustee's Motion to Dismiss Case

EH__

Docket 99

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus Sandoval

Represented By
Rebecca Tomilowitz

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:31 PM

6:12-29624 Thomas D Felch and Michelle M Felch

Chapter 13

#14.00 Trustee's Motion to Dismiss Case Due to Material Default

EH__

Docket 118

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas D Felch

Represented By
Michael F Chekian

Joint Debtor(s):

Michelle M Felch

Represented By
Michael F Chekian

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)
Amrane (SA) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:31 PM

6:12-21385 John Raymond Elbers and Nancy Ann Elbers

Chapter 13

#15.00 Trustee's Motion to Dismiss Case

EH__

Docket 101

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Raymond Elbers Pro Se

Joint Debtor(s):

Nancy Ann Elbers Pro Se

Trustee(s):

Amrane (RS) Cohen (TR) Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:31 PM

6:12-36623 Michael Duane Cummings and Sauna Denise Cummings

Chapter 13

#16.00 Trustee's Motion to Dismiss Case

EH__

Docket 119

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Duane Cummings

Represented By
Devin Sawdayi

Joint Debtor(s):

Sauna Denise Cummings

Represented By
Devin Sawdayi

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:31 PM

6:12-37351 Blanca Estela Flores

Chapter 13

#17.00 Trustee's Motion to Dismiss Case Due to Material Default

EH__

Docket 110

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blanca Estela Flores

Represented By
John F Brady
Lisa H Robinson

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:16-20260 Javier Lopez

Chapter 13

Adv#: 6:17-01054 Amarillo College of Hairdressing, Inc. v. Lopez

#18.00 CONT Status Conference Re: Complaint by Amarillo College of Hairdressing, Inc., against Javier Lopez. false pretenses, false representation, actual fraud, 67 - Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 68 - Dischargeability - 523(a)(6), willful and malicious injury

From: 5/11/17, 6/22/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Javier Lopez

Represented By
Christopher Hewitt

Defendant(s):

Javier Lopez

Pro Se

Joint Debtor(s):

Carmen Lopez

Represented By
Christopher Hewitt

Plaintiff(s):

Amarillo College of Hairdressing,

Represented By
Eamon Jafari

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:15-17034 James M. DiBari

Chapter 13

#19.00 Trustee's Motion to Dismiss Case

Also #20

EH__

Docket 50

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James M. DiBari

Represented By
Michael Salanick

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:15-17034 James M. DiBari

Chapter 13

#20.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Also #19

EH__

Docket 51

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James M. DiBari

Represented By
Michael Salanick

Movant(s):

James M. DiBari

Represented By
Michael Salanick
Michael Salanick

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:15-21548 Chi Kan Yu

Chapter 13

#21.00 Motion Re: Objection to Claim Number 7 by Claimant Midland Funding, LLC

EH__

Docket 142

*** VACATED *** REASON: WITHDRAWAL FILED 8/3/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chi Kan Yu

Represented By
Christopher J Langley

Movant(s):

Chi Kan Yu

Represented By
Christopher J Langley
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:16-17769 Efren Diaz Estrada

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Efren Diaz Estrada

Represented By
W. Derek May

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:16-20003 Pamula Raye St Dennis

Chapter 13

#23.00 CONT Confirmation of Chapter 13 Plan

From: 6/8/17, 7/6/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pamula Raye St Dennis

Represented By
Cynthia A Dunning

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:13-28594 Jimmy Radu Vianu and Milagros Vianu

Chapter 13

#24.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

EH__

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jimmy Radu Vianu

Represented By
Andrew Nguyen

Joint Debtor(s):

Milagros Vianu

Represented By
Andrew Nguyen

Movant(s):

Milagros Vianu

Represented By
Andrew Nguyen

Jimmy Radu Vianu

Represented By
Andrew Nguyen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-10681 Kisha Eugena Stegall-Hill

Chapter 13

#25.00 Motion RE: Objection to Claim Number 1 by Claimant Cavalry SPV I, LLC.

EH__

Docket 47

***** VACATED *** REASON: CASE DISMISSED 7/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kisha Eugena Stegall-Hill

Represented By
Christopher J Langley

Movant(s):

Kisha Eugena Stegall-Hill

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-10966 Ester Cruz

Chapter 13

#26.00 Motion RE: Objection to Claim Number 9 by Claimant Portfolio Recovery Associates, LLC.

Also #27

EH__

Docket 21

Tentative Ruling:

08/17/17

Background:

On February 8, 2017 ("Petition Date"), Ester Cruz (the "Debtor") filed for chapter 13 relief.

On July 17, 2017, the Debtor filed an Objection to Claim No. 9-1 (the "Objection") of Portfolio Recovery Associates, LLC ("Claimant"). The Objection was served on Claimant at the address it has provided on Claim No. 9 where notices should be sent. No opposition has been filed.

Claim #: 9

Amount: \$1,984.37

Objection:

The Debtor objects to the claim on the grounds Claimant has failed to attach

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

CONT... Ester Cruz

Chapter 13

evidence of the assignment from the original creditor to the claimant.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *United States v. Offord Fin., Inc., (In re Medina)*, 205 B.R. 216,222 (9th Cir. BAP 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *Ashford v. Consol. Pioneer Mort. (In re Consol. Pioneer Mort.)*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *Lundell*, 223 F.3d at 1039; *Holm*, 931 F.2d at 623.

Analysis:

Rebuttal of the Prima Facie Proof of Claim

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

CONT... Ester Cruz

Chapter 13

Here, the Court has examined Proof of Claim No. 9-1 and has compared it to the Debtor's schedules wherein the Debtor listed a claim of Capital One (the predecessor in interest to Claimant per the Proof of Claim) for \$1,948 (where Claim No. 9 is for \$1,984.37), and which both the Debtor and Claimant confirmed was last active on February 18, 2016. Based on the corroborating evidence contained in the Debtor's schedules, the Court finds that Proof of Claim No. 9 is prima facie valid and the Debtor has not come forward with evidence to overcome that validity.

TENTATIVE RULING

The Court is inclined to OVERRULE the Debtor's objection in its entirety.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ester Cruz

Represented By
Christopher J Langley

Movant(s):

Ester Cruz

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-10966 Ester Cruz

Chapter 13

#27.00 Motion RE: Objection to Claim Number 10 by Claimant Portfolio Recovery Associates, LLC.

Also #26

EH__

Docket 22

Tentative Ruling:

08/17/17

Background:

On February 8, 2017 ("Petition Date"), Ester Cruz (the "Debtor") filed for chapter 13 relief.

On July 17, 2017, the Debtor filed an Objection to Claim No. 10-1 (the "Objection") of Portfolio Recovery Associates, LLC ("Claimant"). The Objection was served on Claimant at the address it has provided on Claim No. 10 where notices should be sent. No opposition has been filed.

Claim #: 10

Amount: \$1,738.30

Objection:

The Debtor objects to the claim on the grounds Claimant has failed to attach

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

CONT... Ester Cruz

Chapter 13

evidence of the assignment from the original creditor to the claimant.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *United States v. Offord Fin., Inc., (In re Medina)*, 205 B.R. 216,222 (9th Cir. BAP 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *Ashford v. Consol. Pioneer Mort. (In re Consol. Pioneer Mort.)*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *Lundell*, 223 F.3d at 1039; *Holm*, 931 F.2d at 623.

Analysis:

Rebuttal of the Prima Facie Proof of Claim

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

CONT... Ester Cruz

Chapter 13

Here, the Court has examined Proof of Claim No. 10-1 and has compared it to the Debtor's schedules wherein the Debtor listed a claim of Comenity Bank (the predecessor in interest to Claimant per the Proof of Claim). Given that the amounts indicated by the Debtor in his schedules and the account number do not match the information in Claim No. 10, it appears that these two debts represent distinct claims. As such, having failed to file opposition or response, the Court finds that Claimant has failed to provide sufficient information to establish their standing to file Claim No. 10-1.

TENTATIVE RULING

The Court is inclined to SUSTAIN the Debtor's objection in its entirety.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ester Cruz

Represented By
Christopher J Langley

Movant(s):

Ester Cruz

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-14186 Joshua Aguilar and Cynthia Rodriguez

Chapter 13

#28.00 CONT Confirmation of Chapter 13 Plan

From: 6/22/17, 8/3/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joshua Aguilar

Represented By
Paul Y Lee

Joint Debtor(s):

Cynthia Rodriguez

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-14292 Lubna Shiraz Ahmed

Chapter 13

#29.00 CONT Confirmation of Chapter 13 Plan

From: 7/6/17, 8/3/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lubna Shiraz Ahmed

Represented By
Joshua L Sternberg

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-14306 Jane R Mary Engel

Chapter 13

#30.00 Motion For Order Compelling Attorney To File Disclosure Of Compensation Pursuant To 11 U.S.C. § 329 And Federal Rule Of Bankruptcy Procedure 2016

EH__

Docket 35

Tentative Ruling:

08/17/2017

BACKGROUND

On May 22, 2017, Jane Mary Engel ("Debtor") filed for chapter 13 relief.

The petition reflects that the Debtor was assisted in the filing of the bankruptcy case by Peter Nisson of Nisson & Nisson ("Counsel").

On May 26, 2017, the case was dismissed for failure of the Debtor to file schedules.

On July 12, 2017, the Office of the United States Trustee ("UST") filed its Notice of Motion and Motion for Order Compelling Attorney to File Disclosure of compensation Pursuant to 11 U.S.C. § 329 ("Motion"). Service was proper and the Motion is unopposed.

DISCUSSION

Section 329(a) provides, in pertinent part that:

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

CONT...

Jane R Mary Engel

Chapter 13

Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation

11 U.S.C. § 329(a).

Subsequent to dismissal of the case, the Debtor filed her Opposition to Case Dismissal as Docket No. 32 (the "Opposition"). The Opposition was filed by the Debtor without the assistance of counsel. In her Opposition, the Debtor indicated that Counsel had abandoned her despite having received a promissory note in the amount of \$5,000 from the Debtor's sister in exchange for representing the Debtor. (Ex.4). The UST has established that Counsel failed to file a Statement of Attorney Compensation despite evidence indicating that he received undisclosed compensation from the Debtor's sister. Counsel, for his part, has failed to file any opposition or response. The UST has correctly pointed out that although the case has been dismissed, the Court reserves jurisdiction over issues related to fees and compensation.

TENTATIVE RULING

For the foregoing reasons, the Motion is GRANTED in its entirety. Counsel is ordered to file a Statement of Attorney Compensation and the Court shall continue to retain jurisdiction over issues relating to § 329 arising from the instant Motion.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Jane R Mary Engel

Represented By
Peter L Nisson

Movant(s):

United States Trustee (RS)

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

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CONT... Jane R Mary Engel

Abram Feuerstein esq

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-14885 Miriam Guadalupe Fricks

Chapter 13

#31.00 CONT Confirmation of Chapter 13 Plan

From: 7/27/17

EH____

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miriam Guadalupe Fricks

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15029 Christopher Charles Grosey

Chapter 13

#32.00 Motion By United States Trustee To Bar The Debtor From Filing Another Bankruptcy Petition

CASE DISMISSED 7/5/17

EH__

Docket 8

Tentative Ruling:

08/17/2017

BACKGROUND

On June 16, 2017 ("Petition Date"), Christopher Grosey (the "Debtor") filed his petition for chapter 13 relief. On July 5, 2017, the Debtor's case was dismissed for failure to file information. Subsequent to dismissal, on July 7, 2017, the Office of the United States Trustee ("UST") filed a Motion to impose a Re-Filing Bar (the "Motion"). No opposition has been filed.

The docket reflects and the UST has confirmed that the Debtor has filed two prior cases: (1) Case Number 17-14183 filed on May 18, 2017, and dismissed on June 5, 2017, for failure to file information; and (2) Case Number 17-13153 filed on April 17, 2017, and dismissed on May 5, 2017, for failure to file information.

As a threshold matter, the Court notes that the case has already been dismissed and the UST's request is limited to imposition of a bar to re-filing pursuant to §§ 349 and 105(a) to prevent further abuse of the bankruptcy system.

DISCUSSION

Here, the UST argues that dismissal of the Debtor's case is insufficient and requests a one year bar to re-filing because the Debtor is abusing the bankruptcy process. Specifically, the UST underscores that the Debtor has now filed three consecutive cases between April and June of 2017, all of which have been dismissed for failure to file schedules. Additionally, the Debtor failed to disclose his prior cases in the current case. The UST argues that the Debtor's conduct indicates an attempt to

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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CONT... Christopher Charles Grosey

Chapter 13

frustrate creditors which warrants a finding of bad faith and imposition of a refile bar.

In light of the foregoing facts, and taking judicial notice of the dockets of the two prior cases, the Court agrees with the UST that the Debtor should not be permitted to abuse the bankruptcy system by consecutive filing of bankruptcy cases without any indication that he is seeking to reorganize his debts and otherwise to comply with the duties imposed on debtors by the bankruptcy code. The UST has established that a one-year bar under the Court's § 105 and § 349 authority is appropriate.

However, it is unclear if the Court has jurisdiction where the Motion was filed after the case was dismissed. Query, how long after a case is dismissed does the Court have jurisdiction to entertain such a motion?

TENTATIVE RULING

Movant to address the foregoing points at the hearing.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Christopher Charles Grosey	Pro Se
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Movant(s):

United States Trustee (RS)	Represented By Abram Feuerstein esq
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Trustee(s):

Rod (MH) Danielson (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15227 John E Neilsen, Sr and Kathy A Neilsen

Chapter 13

#33.00 Motion to Avoid Junior Lien with Dreambuilder Investments LLC Serviced by Trojan Capital Investments LLC

EH__

Docket 17

Tentative Ruling:

08/17/2017

Summary of the Motion:

Notice: Improper

Opposition: None

Address: 41880 Lakefront Dr, Aguanga, CA 92536

First trust deed: \$477,763.49 with US Bank NA

Second trust deed (to be avoided): \$101,668.75 with DreamBuilder Investments LLC

Fair market value: \$465,000 (Appraisal)

TENTATIVE

The Motion is deficient for the following reasons:

1. Service of the Motion was improper because the Debtors failed to serve the Motion to the attention of an officer for both Trojan and Dreambuilder Investments pursuant to FRBP 7004; and
2. The appraisal attached to the Motion as Exhibit "4" is not supported by a declaration of the appraiser, without which the appraisal is hearsay.

Based on the foregoing, the Court is inclined to CONTINUE the hearing for the Debtor to obtain a declaration of the appraiser and for the Debtor to file and properly serve notice of the continuance and the moving papers on Trojan and Dreambuilder.

The hearing shall be continued to September 21, 2017, at 12:30 p.m. The amended motion and notice of continuance must be filed on or before August 31, 2017.

APPEARANCES WAIVED.

Party Information

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

CONT... John E Neilsen, Sr and Kathy A Neilsen

Chapter 13

Debtor(s):

John E Neilsen Sr

Represented By
Julie J Villalobos

Joint Debtor(s):

Kathy A Neilsen

Represented By
Julie J Villalobos

Movant(s):

Kathy A Neilsen

Represented By
Julie J Villalobos

John E Neilsen Sr

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15227 John E Neilsen, Sr and Kathy A Neilsen

Chapter 13

#33.10 CONT Confirmation of Chapter 13 Plan

From: 7/27/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John E Neilsen Sr

Represented By
Julie J Villalobos

Joint Debtor(s):

Kathy A Neilsen

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15417 Meghan McConaghy

Chapter 13

#34.00 CONT Confirmation of Chapter 13 Plan

From: 8/3/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Meghan McConaghy

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15586 Jeannine Michon Norman

Chapter 13

#35.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeannine Michon Norman Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15593 Regino Perez Jaurequi

Chapter 13

#36.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 7/21/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Regino Perez Jaurequi

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15604 Mandy Catron

Chapter 13

#37.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mandy Catron

Represented By
Stephen S Smyth

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15606 Jose Steven Rodriguez

Chapter 13

#38.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 7/21/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Steven Rodriguez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15635 Michelle D Harris

Chapter 13

#39.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 7/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michelle D Harris

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15646 Elida Soto

Chapter 13

#40.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elida Soto

Represented By
William G Cort

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15655 Andrew Diaz Rodriguez

Chapter 13

#41.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 7/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andrew Diaz Rodriguez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15693 Rita Maria Maldonado

Chapter 13

#42.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rita Maria Maldonado

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15694 James Michael Young

Chapter 13

#43.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Michael Young

Represented By
D Justin Harelik

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15728 Jesus Angel Acosta and Maria Teresa Acosta

Chapter 13

#44.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus Angel Acosta

Represented By
James Geoffrey Beirne

Joint Debtor(s):

Maria Teresa Acosta

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15729 Franklin R. Meza

Chapter 13

#45.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Franklin R. Meza

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15750 Miguel A Angulo

Chapter 13

#46.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 7/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miguel A Angulo

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15790 Willa Henderson Childress

Chapter 13

#47.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 7/31/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Willa Henderson Childress

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15792 William Martin Farber

Chapter 13

#48.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Martin Farber

Represented By
Steven A Alpert

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15822 Alfredo Loera and Veronica O Loera

Chapter 13

#49.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alfredo Loera

Represented By
Paul Y Lee

Joint Debtor(s):

Veronica O Loera

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15864 Stasha Lauran Sill

Chapter 13

#50.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stasha Lauran Sill

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15867 Silvia Alvarez

Chapter 13

#51.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Silvia Alvarez

Represented By
Filemon Kevin Samson III

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15878 William Henry ONeil

Chapter 13

#52.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/1/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Henry ONeil

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15879 Maria G Penunuri

Chapter 13

#53.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/1/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria G Penunuri

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:32 PM

6:17-15893 Joseph Manuel Ruiz and Shannon Elizabeth Ruiz

Chapter 13

#54.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joseph Manuel Ruiz

Represented By
April E Roberts

Joint Debtor(s):

Shannon Elizabeth Ruiz

Represented By
April E Roberts

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:13-17553 Kenneth Vernell Hawkins and Brenda A Hawkins

Chapter 13

#55.00 Trustee's Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 128

***** VACATED *** REASON: CASE CONVERTED TO CHAPTER 7 ON
8/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth Vernell Hawkins

Represented By
Craig J Beauchamp

Joint Debtor(s):

Brenda A Hawkins

Represented By
Craig J Beauchamp

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:13-18728 Jeanette Johnson

Chapter 13

#56.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 63

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeanette Johnson

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:13-23032 David R. Roberts and Crystal A Roberts

Chapter 13

#57.00 Trustee's Motion to Dismiss Case

EH__

Docket 63

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David R. Roberts

Represented By
Javier H Castillo

Joint Debtor(s):

Crystal A Roberts

Represented By
Javier H Castillo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:13-28666 Mildred Goodridge Crawford

Chapter 13

#58.00 Trustee's Motion to Dismiss Case

EH__

Docket 179

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/7/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mildred Goodridge Crawford

Represented By
Michael Smith
Craig K Streed
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:14-12676 Jimmie Lee Bracy, Jr.

Chapter 13

#59.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 137

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jimmie Lee Bracy Jr.

Represented By
Gregory M Shanfeld

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:14-16606 Leslie R Williams

Chapter 13

#60.00 Trustee's Motion to Dismiss Case

EH__

Docket 128

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Leslie R Williams

Represented By
Michael Smith
Craig K Streed
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:14-22362 James Lange and Michelle Lange

Chapter 13

#61.00 Trustee's Motion to Dismiss Case

EH__

Docket 106

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Lange

Represented By
Michael Smith
Sundee M Teeple
Craig K Streed

Joint Debtor(s):

Michelle Lange

Represented By
Michael Smith
Sundee M Teeple
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:14-23389 Deborah L. Hill

Chapter 13

#62.00 Trustee's Motion to Dismiss Case

EH__

Docket 170

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/15/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah L. Hill

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:15-10760 Kevin S. Klose and Diana K. Klose

Chapter 13

#63.00 Trustee's Motion to Dismiss Case (Delinquency)

EH__

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kevin S. Klose

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Diana K. Klose

Represented By
Patricia M Ashcraft

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:15-12404 Anthony E Turkson

Chapter 13

#64.00 Trustee's Motion to Dismiss Case

EH__

Docket 74

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anthony E Turkson

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:15-14501 Vonetta M Mays

Chapter 13

#65.00 CONT Trustee's Motion to Dismiss Case

From: 8/3/17

EH__

Docket 145

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vonetta M Mays

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:15-15831 William R Parker and Cheryl Parker

Chapter 13

#66.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 75

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William R Parker

Represented By
Julie J Villalobos

Joint Debtor(s):

Cheryl Parker

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:15-15970 David Anthony Lopez, Jr. and Linda Cristine Lopez

Chapter 13

#67.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 49

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/9/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Anthony Lopez Jr.

Represented By
Heather J Canning
Barry E Borowitz

Joint Debtor(s):

Linda Cristine Lopez

Represented By
Heather J Canning
Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:15-20998 Eric Kissell

Chapter 13

#68.00 Trustee's Motion to Dismiss Case re Delinquency

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eric Kissell

Represented By
William J Howell

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-12031 Maria Lourdes Magallon

Chapter 13

#69.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 47

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/31/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Lourdes Magallon

Represented By
Leonard Pena

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-12191 Valicia LaShawn Fennell

Chapter 13

#70.00 Trustee's Motion to Dismiss Case

EH__

Docket 46

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Valicia LaShawn Fennell Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-12347 Jose Luis Ceballos and Edelmira Castro

Chapter 13

#71.00 CONT Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

From: 8/3/17

EH__

Docket 72

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Luis Ceballos

Represented By
David Lozano

Joint Debtor(s):

Edelmira Castro

Represented By
David Lozano

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-12692 Arturo Villagrana

Chapter 13

#72.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 32

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arturo Villagrana

Represented By
Raj T Wadhvani

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-13233 Sherry Ann Beardsley

Chapter 13

#73.00 Trustee's Motion to Dismiss Case

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sherry Ann Beardsley

Represented By
Jeffrey D Larkin

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-14084 Martin Linares and Elvia Linares

Chapter 13

#74.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 8/3/17

EH__

Docket 47

*** VACATED *** REASON: ORDER ENTERED 8/8/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martin Linares

Represented By
Michael Smith
Craig K Streed
Sundee M Teeple

Joint Debtor(s):

Elvia Linares

Represented By
Michael Smith
Craig K Streed
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-14087 Donald L Maddox and Lisa A Maddox

Chapter 13

#75.00 Trustee's Motion to Dismiss Case

EH__

Docket 60

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald L Maddox

Represented By
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Lisa A Maddox

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-15797 Kendra Susan Lewkow

Chapter 13

#76.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kendra Susan Lewkow

Represented By
Morton J Grabel

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-16314 Anthony James Parker and Cynthia Parker

Chapter 13

#77.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 37

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/27/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anthony James Parker

Represented By
Michael E Clark
Barry E Borowitz

Joint Debtor(s):

Cynthia Parker

Represented By
Michael E Clark
Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-16908 Oscar Chavez

Chapter 13

#78.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 49

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oscar Chavez

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-17084 Katrina Renee McDowell

Chapter 13

#79.00 CONT Trustee's Motion for Order Dismissing Chapter 13 Proceeding
(Delinquency)

From: 8/3/17

EH__

Docket 81

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Katrina Renee McDowell

Represented By
S Renee Sawyer Blume
Christopher J Langley
Matthew D Resnik

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-18621 John Wesley Wilson, Jr. and Michelle Janet Wilson

Chapter 13

#80.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 38

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Wesley Wilson Jr.

Represented By
Julie J Villalobos

Joint Debtor(s):

Michelle Janet Wilson

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-18724 Victor Quito Rabara

Chapter 13

#81.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 36

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/26/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victor Quito Rabara

Represented By
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-19396 Pamela Lynn King

Chapter 13

#82.00 CONT Trustee's Motion to Dismiss Case

From: 8/3/17

EH__

Docket 22

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pamela Lynn King

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-20026 Julio C. Davila

Chapter 13

#83.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julio C. Davila

Represented By
Michael Jay Berger

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-20929 Don Stevie Gurule and Elaine Louise Gurule

Chapter 13

#84.00 Trustee's Motion to Dismiss Case

EH__

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Don Stevie Gurule

Represented By
Dana Travis

Joint Debtor(s):

Elaine Louise Gurule

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-21064 Gabriel Simon

Chapter 13

#85.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gabriel Simon

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-21233 Grady Singleton, III and Michelle Singleton

Chapter 13

#86.00 Trustee's Motion to Dismiss Case

Also #87

EH__

Docket 37

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Grady Singleton III

Represented By
Paul Y Lee

Joint Debtor(s):

Michelle Singleton

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:16-21233 Grady Singleton, III and Michelle Singleton

Chapter 13

#87.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 8/3/17

Also #86

EH__

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Grady Singleton III

Represented By
Paul Y Lee

Joint Debtor(s):

Michelle Singleton

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:17-12411 Maria I Alcaraz and Eduardo D Alcaraz

Chapter 13

#88.00 Trustee's Motion to Dismiss Case

EH__

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria I Alcaraz

Represented By
Manfred Schroer

Joint Debtor(s):

Eduardo D Alcaraz

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 17, 2017

Hearing Room 303

12:33 PM

6:17-13063 Ethel N Odimegwu

Chapter 13

#89.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/9/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ethel N Odimegwu

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:11-31782 Dina Guadalupe Garay

Chapter 13

#1.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 3966 Camellia Dr, San Bernardno, CA 92407

MOVANT: USA BANK NATIONAL ASSOCIATION

From: 4/4/17, 5/16/17, 6/20/17, 7/25/17

EH__

Docket 68

***** VACATED *** REASON: WITHDRAWL OF MOTION FILED
8/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dina Guadalupe Garay

Represented By
Aalok Sikand
Vito Torchia - DISBARRED -

Movant(s):

U.S. BANK NATIONAL

Represented By
Megan E Lees
Alexander K Lee

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:12-32682 Mark A Rowley and Catherine C Rowley

Chapter 13

#2.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 33035 Paoli Court, Temecula, CA 92592

MOVANT: HSBC BANK USA

From: 6/20/17, 7/25/17

EH__

Docket 92

Tentative Ruling:

June 20, 2017

Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay and ¶3. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Mark A Rowley

Represented By
Tate C Casey

Joint Debtor(s):

Catherine C Rowley

Represented By
Tate C Casey

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

CONT... Mark A Rowley and Catherine C Rowley

Chapter 13

Movant(s):

HSBC Bank USA, National

Represented By
Alexander K Lee

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:13-11584 Raphael A Lavine and Marcia Eurita Lavine

Chapter 13

#3.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 31065 Pintail Way, Winchester, California 92596

MOVANT: DITECH FINANCIAL LLC

From: 7/25/17

EH__

Docket 80

***** VACATED *** REASON: ORDER ENTERED 7/27/17**

Tentative Ruling:

July 25, 2017

Service: Proper

Opposition: Yes

Subject to adequate protection discussions, the Court is inclined to GRANT relief from the stay under § 362(d)(1) based on failure to make post-petition payments. GRANT waiver of 4001(a)(3) stay and request under ¶ 3. Request for APO is DENIED as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Raphael A Lavine

Represented By
Frank X Ruggier
Steven A Alpert

Joint Debtor(s):

Marcia Eurita Lavine

Represented By
Frank X Ruggier

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

**CONT... Raphael A Lavine and Marcia Eurita Lavine
Steven A Alpert**

Chapter 13

Movant(s):

Ditech Financial LLC

Represented By
Jeff Rawlings
Alexander K Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:13-21046 Cecilia R Rodas

Chapter 13

#4.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 863 W Bonnie Brae Ct, Ontario, CA 91762-1502

MOVANT: WELLS FARGO BANK NA

EH__

Docket 113

Tentative Ruling:

Hearing Date: 8/22/17
Service: Proper
Opposition: Yes

Subject to discussion re adequate protection terms, the Court is inclined to GRANT relief from the stay under § 362(d)(1).
GRANT waiver of 4001(a)(3) stay.

GRANT Movant leave to offer/provide/enter into a potential forbearance, loan modification, refinance agreement or other loan workout.

GRANT relief requested that upon entry of this Order, for purposes of Cal. Civ. Code § 2923.5, the debtor is a borrower as defined in Cal. Civ. Code § 2920.5(C)(2)(C).
Request for APO is DENIED as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Cecilia R Rodas

Represented By
Michael Smith
Sundee M Teeple

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

CONT... Cecilia R Rodas

Chapter 13

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:14-14265 Ricardo Pimentel and Maria Pimentel

Chapter 13

#5.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 7467 Eddy Ave, Riverside, CA 92509-3420

MOVANT: WELLS FARGO BANK NA

From: 5/9/17, 6/20/17, 7/25/17

EH _____

Docket 47

***** VACATED *** REASON: ORDER ENTERED 7/28/17**

Tentative Ruling:

Tentative Ruling:

5/9/2017

Service is Proper
Opposition: Yes

Parties to advise Court regarding adequate protection discussions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ricardo Pimentel

Represented By
Tamar Terzian

Joint Debtor(s):

Maria Pimentel

Represented By
Tamar Terzian

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

CONT... Ricardo Pimentel and Maria Pimentel

Chapter 13

Movant(s):

WELLS FARGO BANK, N. A.

Represented By

Dane W Exnowski

Melissa A Anderson

Oneika White-Dovlo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:15-15599 Michael O'Cull

Chapter 13

#6.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2895 Camellia Ct, Corona, CA 92882

MOVANT: PHH MORTGAGE CORPORATION AND ITS SUCCESSORS

EH__

Docket 44

Tentative Ruling:

Hearing Date: 8/22/17
Service: Proper
Opposition: Yes

Tentative ruling is to GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT authority to offer loan workout options.

Parties to confirm cure of arrears.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Michael O'Cull

Represented By
Julie J Villalobos

Movant(s):

PHH Mortgage Corporation, its

Represented By
Christina J O

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:15-17981 Jacqueline Armitage

Chapter 7

#7.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 53484 Rawhide Rd Pioneertown CA 92268

MOVANT: WALTER J OKON

EH__

Docket 56

Tentative Ruling:

08/22/2017

Service: Proper

Opposition: Yes

Debtor asserts that Movant is not the actual holder or current assignee of the Note, is not the real party in interest, and has no legal standing to bring this Motion. Debtor further disputes the amount owing to Movant of \$98,319.99 as no evidence was provided by Movant, and Debtor has not received a mortgage statement in years. There is no declaration by the Debtor or Debtor's attorney provided nor any evidence provided in support thereof.

A party seeking relief from the stay "need only establish that it has a colorable claim to enforce a right against property of the estate." In re Pak, 2011 WL 7145763 (9th Cir.BAP (Cal.) 2011). A showing by a party that it is a person entitled to enforce the note at issue or that it holds some ownership or other interest in the note translates to a colorable claim. Id. In this case, the Deed of Trust and Assignment of Deed of Trust were both recorded on September 23, 2014 and both show the original lender as "Val-Chris Investments Inc., a California Corporation." The Trust Deed assignment shows all beneficial interest under the Deed of Trust was transferred to Movant. The Note Secured By A Deed of Trust dated 9/9/14 also shows the same original lender, and the Promissory Note Endorsement indicates all beneficial interest under the Note was transferred to Movant. Based on this evidence attached to the Motion, Movant has established that it has a colorable claim sufficient to provide it standing to seek relief from stay.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

CONT... Jacqueline Armitage

Chapter 7

A motion for stay relief is a summary proceeding. In re Santa Clara County Fair Ass'n, Inc., 180 B.R. 564 (9th Cir.BAP (Cal.) 1995) (citing In re Computer Communications, Inc., 824 F.2d 725, 729 (9th Cir.1987)). In a summary proceeding, the court's discretion is broad. Courts may consider the factor of judicial economy when deciding lift stay issues. Id.

The only triable issues in a Motion for Relief from Stay are (1) lack of adequate protection; (2) the debtor's equity in the property; and (3) the necessity of the property to an effective reorganization of the debtor, or (4) the existence of other cause for relief from the stay. In re Computer Communications, Inc., 824 F.2d 725, 729.

Here, the issues and defenses surrounding the validity of the underlying security do not directly relate to the lifting of the stay, and accordingly they are not issues that are before the bankruptcy court. The irregularities raised by the Debtor are more properly considered by a state court in the determination of an unlawful detainer action.

The Movant, for its part, has demonstrated that "cause" exists to lift the stay based on the Debtor's continuing nonpayment of the regular mortgage payments. The Court's tentative ruling is to GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay and GRANT authority for Movant to offer loan workout options.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jacqueline Armitage

Represented By
Ashishkumar Patel

Movant(s):

WALTER J OKON, Trustee of the

Represented By
Julian K Bach

Trustee(s):

Lynda T. Bui (TR)

Represented By
Rosendo Gonzalez

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:16-11165 Efrain Figueroa

Chapter 13

#8.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 729 North Baker Avenue Ontario, California 91764

MOVANT: BANK OF AMERICA, N.A.

EH__

Docket 33

Tentative Ruling:

Hearing Date: 8/22/17
Service: Proper
Opposition: Yes

The Debtor has provided evidence that more payments have been made than are accounted for by the Movant. However, even with the additional payments, the Debtor does not dispute that he remains delinquent by at least two payments.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Efrain Figueroa

Represented By
Raj T Wadhvani

Movant(s):

Bank of America, N.A.

Represented By
William F McDonald III
Asya Landa
Bonni S Mantovani
Cassandra J Richey

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

CONT... Efrain Figueroa

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:16-13375 Antoine Williams

Chapter 13

#9.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 15244 Hawk Street, Fontana, CA 92336

MOVANT: US BANK NATIONAL ASSOCIATION

From: 4/25/17, 6/20/17, 7/25/17

EH _____

Docket 46

*** VACATED *** REASON: ORDER ENTERED 7/26/17

Tentative Ruling:

Tentative Ruling:

4/25/2017

Service is Proper
Opposition: Yes

While relief from stay appears warranted, parties to discuss adequate protection if amounts in default are not fully cured by hearing.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Antoine Williams

Represented By
Gary Leibowitz
Jacqueline D Serrao

Movant(s):

U.S. Bank National Association, as

Represented By
Dane W Exnowski

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, August 22, 2017

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10:00 AM

CONT... Antoine Williams

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:16-16908 Oscar Chavez

Chapter 13

#10.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 5721 Olive Avenue, Rialto, CA 92377

MOVANT: BANK OF AMERICA, N.A.

CASE DISMISSED 8/17/17

EH__

Docket 53

Tentative Ruling:

Hearing Date: 8/22/17

Service: Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1).

GRANT waiver of 4001(a)(3) stay.

GRANT termination of the co-debtor stay.

GRANT Movant leave to offer/provide/enter into a potential forbearance, loan modification, refinance agreement or other loan workout.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Oscar Chavez

Represented By
Julie J Villalobos

Movant(s):

BANK OF AMERICA, N.A.

Represented By

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

CONT... Oscar Chavez

Chapter 13

Christina J O
Melissa A Vermillion

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:16-18319 YBF Tax, Inc.

Chapter 7

#11.00 CONT Motion for relief from automatic stay with supporting declarations
ACTION IN NON-BANKRUPTCY FORUM RE: Rosa Bryant v YBF Tax Inc et al;
CIV DS1504314; Pending: Superior Court of CA San Bernardino Court

MOVANT: ROSA BRYANT

From: 5/30/17, 8/1/17

EH__

Docket 32

***** VACATED *** REASON: ORDER ENTERED 8/8/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

YBF Tax, Inc.

Represented By
Ronald W Ask

Movant(s):

Rosa Bryant

Represented By
Michael F Chekian

Trustee(s):

Karl T Anderson (TR)

Represented By
Lovee D Sarenas

**United States Bankruptcy Court
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10:00 AM

6:16-19783 Melanie Lourdes Davis

Chapter 13

#12.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2011 TOYOTA PRIUS, Vin:
JTDKN3DU8B1405531

MOVANT: TOYOTA MOTOR CREDIT CORPORATION

EH__

Docket 41

Tentative Ruling:

Hearing Date: 8/22/17
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing,
the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Melanie Lourdes Davis

Represented By
Gary S Saunders

Movant(s):

Toyota Motor Credit Corporation

Represented By
Erin M McCartney
Tyneia Merritt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:16-20026 Julio C. Davila

Chapter 13

#13.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 17937 Aloe Lane, Riverside, CA 92503

MOVANT: PENNYMAC LOAN SERVICES, LLC

CASE DISMISSED 8/17/17

EH__

Docket 30

Tentative Ruling:

Hearing Date: 8/22/17

Service: Proper

Opposition: Yes

Parties to advise Court regarding status of stipulation for adequate protection.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Julio C. Davila

Represented By
Michael Jay Berger

Movant(s):

PennyMac Loan Services, LLC

Represented By
Theron S Covey

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:16-20108 Suzanne Shumway Carter

Chapter 13

#14.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: Property known as 15611 Fremont Dr Adelanto, CA 92301

MOVANT: NATIONSTAR MORTGAGE LLC

EH__

Docket 28

***** VACATED *** REASON: ORDER ENTERED 8/8/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Suzanne Shumway Carter

Represented By
Todd L Turoci

Movant(s):

Nationstar Mortgage LLC

Represented By
Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:16-20258 Matthew Bruce and Scott Bruce

Chapter 13

#15.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 66970 Flora Ave Desert Hot Springs, CA 92240

MOVANT: BAYVIEW LOAN SERVICING LLC

EH__

Docket 34

Tentative Ruling:

Hearing Date: 8/22/17
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1).

GRANT waiver of 4001(a)(3) stay.

GRANT Movant leave to offer/provide/enter into a potential forbearance, loan
modification, refinance agreement or other loan workout.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing,
the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Matthew Bruce

Represented By
Christopher Hewitt

Joint Debtor(s):

Scott Bruce

Represented By
Christopher Hewitt

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10:00 AM

CONT... Matthew Bruce and Scott Bruce

Chapter 13

Movant(s):

BAYVIEW LOAN SERVICING,

Represented By
Edward G Schloss

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:16-20926 Mario Mondragon

Chapter 13

#16.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2007 Ford F250

MOVANT: WESTLAKE SERVICES dba WESTLAKE FINANCIAL SERVICES

EH__

Docket 29

Tentative Ruling:

Hearing Date: 8/22/17
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1).

GRANT waiver of 4001(a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing,
the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Mario Mondragon

Represented By
Michael Smith
Sundee M Teeple

Movant(s):

Westlake Services dba Westlake

Represented By
Robert P Zahradka

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:17-11670 AMANDO MORALES and ALICIA MALDONADO

Chapter 7

#17.00 CONT Motion for relief from automatic stay with supporting declarations
ACTION IN NON-BANKRUPTCY FORUM RE: Real Property

MOVANT: MARTHA E GUERRERO AND EDUARDO E GUERRERO

FROM: 4/25/17, 5/30/17, 7/11/17, 7/25/17

EH__

Docket 11

***** VACATED *** REASON: CONTINUED TO 10/24/17 AT 10:00 AM**

Tentative Ruling:

5/30/17

Debtor's opposition argues that the real estate contract is an executory contract that can be rejected in bankruptcy. While providing an applicable citation for that assertion, Debtor does not apply the legal standard to the facts of this case.

Nevertheless, it appears that Debtor's characterization of the contract as "executory" may have merit. While Movant, in the motion, states that "all contingencies had been removed," and, in the reply, states that they "dutifully removed all their contractual contingencies," the state court complaint submitted to support their motion states, in paragraph 23: "Plaintiffs have fully performed all conditions, covenants, and promises required by them on their part to be performed in accordance with the terms and conditions of the contract, *except* the final payment for the purchase of the Property." (emphasis added). While Movants appear to have made the initial deposit into escrow, it does not appear that the final purchase price was tendered.

"[A]n 'executory contract' that can be rejected in bankruptcy is a contract on which performance remains due on both sides at the time of the bankruptcy petition." *Matter of Newcomb*, 744 F.2d 621, 624 (8th Cir. 1984); *see also In re Texscan Corp.*, 976 F.2d 1269-1271-72 (9th Cir. 1992). In *Newcomb*, the Court held that when the funds had already been transferred into escrow, there was no executory contract – no material obligations remained on the part of the grantor. *See id.*

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10:00 AM

CONT... AMANDO MORALES and ALICIA MALDONADO

Chapter 7

In the Ninth Circuit, a real estate sales contract remains executory until the full purchase price is deposited into escrow by the purchaser. *See In re Hertz*, 536 B.R. 434, 439-41 (Bankr. C.D. Cal. 2015) (an extended discussion on when a purchase contract loses its executory nature).

Given that the real estate purchase contract may be an executory contract that shortly will be rejected by operation of law under 11 U.S.C. § 365(d)(1), and that Movants are seeking a state court order for specific performance under the contract, granting relief from stay would be improper because the state court proceedings would interfere with the bankruptcy court proceedings. Interference with the administration of the estate is the most important consideration when considering a motion for relief from stay to proceed with state court litigation. *See In re Roger*, 539 B.R. 837, 845 C.D. Cal. 2015) ("According to the court in *Curtis*, the most importance factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate. Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit."). Here, there is a possibility of significant interference with the bankruptcy estate.

Tentative Ruling:

For the foregoing reasons, the Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

AMANDO MORALES

Represented By
William D Gurney

Joint Debtor(s):

ALICIA MALDONADO JIMENEZ

Represented By
William D Gurney

Movant(s):

Eduardo E. Guerrero

Represented By

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10:00 AM

CONT... AMANDO MORALES and ALICIA MALDONADO

Chapter 7

Christopher J Langley

Trustee(s):

Charles W Daff (TR)

Represented By
Brandon J Iskander
Lynda T Bui

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10:00 AM

6:17-13095 Isabel M Gutierrez

Chapter 13

#18.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 10308 Wood Owl Court, Las Vegas, NV 89144

MOVANT: NATIONSTAR MORTGAGE LLC

EH__

Docket 22

Tentative Ruling:

Hearing Date: 8/22/17

Service: Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1) and (d)(4). Court finds that the bankruptcy case was part of a scheme to hinder, delay and defraud creditors based on multiple bankruptcy filings and unauthorized transfers affecting this property.

Based on a finding of bad faith, GRANT request for extraordinary relief as to ¶10.
DENY request for extraordinary relief as to ¶¶ 8 and 11 for lack of cause shown.

GRANT waiver of 4001(a)(3) stay.

GRANT termination of the co-debtor stay.

GRANT Movant leave to offer/provide/enter into a potential forbearance, loan modification, refinance agreement or other loan workout.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Isabel M Gutierrez

Pro Se

**United States Bankruptcy Court
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10:00 AM

CONT... Isabel M Gutierrez

Chapter 13

Movant(s):

Nationstar Mortgage LLC as

Represented By
Nancy L Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

10:00 AM

6:17-13760 Jorge Enrique Garcia Orta and Maria Elena Herrera Reyes Chapter 7

#19.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 32105 Terra Cotta, Lake Elsinore, CA 92530

MOVANT: US BANK NATIONAL ASSOCIATION AS TRUSTEE FOR JP MORGAN MORTGAGE ACQUISITION CORP

EH__

Docket 20

Tentative Ruling:

08/22/17

Service: Proper

Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2).

GRANT waiver of 4001(a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days

Party Information

Debtor(s):

Jorge Enrique Garcia Orta

Represented By
Brian J Soo-Hoo

Joint Debtor(s):

Maria Elena Herrera Reyes

Represented By
Brian J Soo-Hoo

Movant(s):

U.S. BANK NATIONAL

Represented By
Sean C Ferry

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10:00 AM

CONT... Jorge Enrique Garcia Orta and Maria Elena Herrera Reyes

Chapter 7

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:17-13804 John P Morris and Cassandra M Morris

Chapter 13

#20.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2015 Toyota Prius, VIN:JTDKN3DU0F1998193

MOVANT: TOYOTA MOTOR CREDIT CORPORATION

EH__

Docket 21

***** VACATED *** REASON: ORDER ENTERED 8/9/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John P Morris

Represented By
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Cassandra M Morris

Represented By
Michael Smith
Sundee M Teeple

Movant(s):

TOYOTA MOTOR CREDIT

Represented By
Mark D Estle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:17-13836 Hermelinda Diaz

Chapter 13

#21.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Re: 3865 VERMONT ST, SAN BERNARDINO, CA 92407

MOVANT: WELLS FARGO BANK, N.A.

CASE DISMISSED 5/26/17

From: 6/27/17, 7/11/17, 8/1/17

EH__

Docket 12

Tentative Ruling:

08/22/17

The hearing on the Motion was continued for the Movant to file and serve the Motion and Notice of Continued hearing to the Debtor at the correct address. Service now appears proper and no opposition has been filed. Based on the foregoing, the Court is inclined to GRANT the Motion as set forth in the tentative ruling for 7/11/2017.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

07/11/2017

Service: Improper

Opposition: None

Once improper service is remedied, the tentative ruling is to GRANT relief from the stay under §§ 362(d)(1) and 362(d)(4) based on the following: Debtor has not paid mortgage for over two years, Movant is one of two creditors listed in case commencement documents, Debtor filed only a few case commencement documents and schedules, and the statement of financial affairs have not been filed. Additionally, the Debtor's failure to file required documents resulted in dismissal of the case on May 26, 2017. Debtor has also filed two previous bankruptcies with respect to the

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10:00 AM

CONT...

Hermelinda Diaz

Chapter 13

property in 2016 which were dismissed. Based on the foregoing, the Court is inclined to GRANT relief pursuant to ¶2, ¶5, ¶7b, and ¶9b. Court is also inclined to GRANT relief that Movant may provide and enter into potential forbearance agreement; confirming that no stay is in effect pursuant to § 362(c)(4). GRANT waiver of 4001(a)(3) stay.

As reflected above, while the court is inclined to grant relief from stay, service was improper due to Movant's failure to serve Debtor. Specifically, the Debtor's address of record is 3865 Vermont St., San Bernardino, CA 92407, however, Movant served the Debtor at 865 Vermont St., San Bernardino, CA 92407. Based on the foregoing, the hearing will be continued to August 1, 2017, at 10:00 a.m.

APPEARANCES WAIVED. Movant to file and serve an amended Notice of Motion and Motion on the Debtor at the correct address no later than July 12, 2017.

Party Information

Debtor(s):

Hermelinda Diaz

Pro Se

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Jason C Kolbe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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10:00 AM

6:17-14391 Ruben Michael Muniz

Chapter 7

#22.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2010 KIA FORTE VIN: KNAFU4A28A5144659

MOVANT: AMERICREDIT FINANCIAL SERVICES, INC

EH__

Docket 10

Tentative Ruling:

Hearing Date: 8/22/17

Service: Proper

Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2).

GRANT waiver of 4001(a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Ruben Michael Muniz

Represented By
Alexander Pham

Movant(s):

Americredit Financial Services, Inc.

Represented By
Sheryl K Ith

Trustee(s):

Robert Whitmore (TR)

Pro Se

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10:00 AM

6:17-14522 Luis Javier Donan Sotelo and Alejandra B. Donan Leyva Chapter 7

#23.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 TOYOTA SCION IA; VIN 3MYDLBZV2GY106521

MOVANT: TOYOTA MOTOR CREDIT CORPORATION

EH__

Docket 13

Tentative Ruling:

Hearing Date: 8/22/17
Service: Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2).

GRANT waiver of 4001(a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Luis Javier Donan Sotelo

Represented By
Alec L Harshey

Joint Debtor(s):

Alejandra B. Donan Leyva

Represented By
Alec L Harshey

Movant(s):

TOYOTA MOTOR CREDIT

Represented By
Mark D Estle

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10:00 AM

CONT... Luis Javier Donan Sotelo and Alejandra B. Donan Leyva

Chapter 7

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:17-15186 BRIAN JOSEPH MCCARTHY

Chapter 7

#24.00 motion for relief from the automatic stay with supporting declarations
UNLAWFUL DETAINER RE: 2025 E. Francis Dr Palm Springs, CA 92262

MOVANT: WELLS FARGO BANK NA AS TRUSTEE ON BEHALF OF THE
HOLDERS OF HARBORVIEW MORTGAGE

EH__

Docket 17

Tentative Ruling:

Hearing Date: 8/22/17

Service: Proper

Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2).

GRANT waiver of 4001(a)(3) stay.

DENY relief requested under ¶3 for lack of cause shown.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing,
the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

BRIAN JOSEPH MCCARTHY

Pro Se

Movant(s):

Wells Fargo Bank, N.A., as trustee,

Represented By
Daniel K Fujimoto
Alexander K Lee

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10:00 AM

CONT... BRIAN JOSEPH MCCARTHY

Chapter 7

Trustee(s):

Lynda T. Bui (TR)

Pro Se

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10:00 AM

6:17-15196 Lori Teal

Chapter 7

#25.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Mercedes-Benz CLA Class VIN: WDDSJ4EB6FN186250

MOVANT: DAIMLER TRUST

EH__

Docket 8

Tentative Ruling:

Hearing Date: 8/22/17

Service: Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1).

GRANT waiver of 4001(a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Lori Teal

Represented By
Andrew Nguyen

Movant(s):

Daimler Trust

Represented By
Sheryl K Ith

Trustee(s):

Karl T Anderson (TR)

Pro Se

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10:00 AM

6:17-15257 Min Joo Choi

Chapter 13

#26.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Re: 1927 ISABELLA ST, OXNARD, CA 93036

MOVANT: WELLS FARGO BANK, N.A.

CASE DISMISSED 7/11/17

EH__

Docket 9

Tentative Ruling:

Hearing Date: 8/22/17

Service: Proper

Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(4). Court finds bad faith and scheme to delay and hinder based on two bankruptcy filings and two unauthorized transfers of 5% property interests.

GRANT waiver of 4001(a)(3) stay. GRANT termination of the co-debtor stay.

GRANT request under ¶9(b) that the Order is binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of a 180 days from the hearing of this Motion, upon recording of a copy of this order .

DENY request under ¶7 [A designated law enforcement officer may evict the Debtor and any other occupant from the Property regardless of any future bankruptcy filing concerning the Property for a period of 180 days from the hearing on this Motion] for lack of cause shown;

DENY request under ¶10 [Order is binding and effective in any future bankruptcy

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CONT... Min Joo Choi

Chapter 13

case, no matter who the debtor may be, upon recording of a copy of this order] for lack of cause shown.

GRANT relief requested under ¶11 that upon entry of this Order, for purposes of Cal. Civ. Code § 2923.5, the debtor is a borrower as defined in Cal. Civ. Code § 2920.5(C)(2)(C).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Min Joo Choi

Pro Se

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Jason C Kolbe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:17-15490 Oscar Avila

Chapter 13

#27.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 6712 Winlock Avenue, Citrus Heights, CA 95621

MOVANT: WELLS FARGO BANK NA

CASE DISMISSED 7/18/17

EH__

Docket 11

Tentative Ruling:

Hearing Date: 8/22/17

Service: Proper

Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(4). Court finds bad faith and scheme to delay and hinder based on three bankruptcy filings and two unauthorized transfers of ownership of, or other interest in the Property.

GRANT waiver of 4001(a)(3) stay. GRANT termination of the co-debtor stay.

GRANT request under ¶10(b) that the Order is binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of a 180 days from the hearing of this Motion, upon recording of a copy of this order .

DENY request under ¶8 and ¶11 for lack of cause shown;

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Oscar Avila

Pro Se

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

CONT... Oscar Avila

Chapter 13

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Nancy L Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:17-15513 Douglas Alan Knowles

Chapter 7

#28.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 14910 Bluebriar Street, Moreno Valley, CA 92553

MOVANT: COUNTY OF RIVERSIDE

EH__

Docket 13

Tentative Ruling:

08/22/2017

Service: Proper

Opposition: Yes

The Debtor responds to the Motion with arguments that indicate misapprehensions of the bankruptcy system. In particular, while the Debtor has correctly pointed to the policy reasons underlying the bankruptcy stay, section 362(d) provides creditors with a legal basis to seek the lifting of the automatic stay. Here, as a threshold matter, the Debtor had a prior case dismissed on July 28, 2016, and thus had a case pending within the previous year. Pursuant to § 362(c)(3), the Debtor had a thirty day period following the filing of the instant case within which to seek continuation of the automatic stay. Having failed to seek a continuance of the automatic stay, the stay terminated as a matter of law on or about July 30, 2017. On this basis, the Movant's request for termination of the stay may be denied as moot because the stay has already terminated.

The Court now turns to the request for prospective relief based on bad faith. As to the Movant's requests for prospective relief, the Court notes that the Debtor filed no declaration in support of his assertions that the prior filings were based on recommendations of prior counsel. There is additionally no detail contained in his arguments and no detail or explanation provided as to why his prior cases were dismissed. Here, given the lack of evidence, the Court finds that the record sufficiently demonstrates a history of the Debtor's abusing the bankruptcy process to

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CONT... **Douglas Alan Knowles**
delay or hinder creditors.

Chapter 7

On that basis, the Court is inclined to GRANT relief from the stay under (d)(4). Court finds bad faith and scheme to delay and hinder based on four previous bankruptcies with respect to the property, all of which were dismissed.

GRANT waiver of 4001(a)(3) stay.

GRANT request under ¶10(b) that the Order is binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of a 180 days from the hearing of this Motion, upon recording of a copy of this order .

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Douglas Alan Knowles	Pro Se
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Movant(s):

County of Riverside Treasurer-Tax	Represented By Ronak N Patel
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Trustee(s):

Robert Whitmore (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
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Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:17-16192 Catherine Lucille Laff

Chapter 13

#29.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 2580 E TAHQUITZ CANYON WAY # 118, PALM SPRINGS, CA 92262

MOVANT: LIVEBYTHEPARK PALM SPRINGS

EH__

Docket 9

***** VACATED *** REASON: CASE DISMISSED 8/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Catherine Lucille Laff

Pro Se

Movant(s):

LivebythePark Palm Springs

Represented By
Barry L O'Connor

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 22, 2017

Hearing Room 303

10:00 AM

6:17-16267 Samuel T Saavedra and Suzanne M Saavedra

Chapter 13

#30.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 3542
Orangewood Ave. Rialto, CA

MOVANT: SAMUEL AND SUZANNE SAAVEDRA

EH__

Docket 16

Tentative Ruling:

08/22/2017

Service was proper

The Debtors have established that the instant case has been filed in good faith. The Debtors have provided sufficient evidence that they nearly completed their prior chapter 13 case but for issues that arose at the end of the 60-month period. Based on the Debtors' history of timely paying into a chapter 13 plan, the Court finds cause to continue the automatic stay.

The Motion is GRANTED and the stay is CONTINUED as to Wells Fargo Home Mortgage.

APPEARANCES WAIVED. Movant to file an order within 7 days.

Party Information

Debtor(s):

Samuel T Saavedra

Represented By
Michael R Totaro

Joint Debtor(s):

Suzanne M Saavedra

Represented By
Michael R Totaro

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CONT... Samuel T Saavedra and Suzanne M Saavedra

Chapter 13

Movant(s):

Suzanne M Saavedra

Represented By
Michael R Totaro

Samuel T Saavedra

Represented By
Michael R Totaro

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#31.00 CONT U.S. Trustee Motion to dismiss or convert Chapter 11 Case

From: 6/27/17, 7/11/17, 8/1/17

EH__

Docket 266

Tentative Ruling:

7/11/17

BACKGROUND

On May 11, 2016, Debtor filed a Chapter 11 voluntary petition. Debtor operated a medical account receivable collection service. On November 30, 2016, a Chapter 11 trustee was appointed.

On June 2, 2017, UST filed a motion to dismiss the Chapter 11 case for failure to pay quarterly fees of either \$9,750 or \$6,825, which were delinquent as of May 1, 2017. On June 13, 2017, the Chapter 11 trustee filed opposition to the motion to dismiss.

DISCUSSION

11 U.S.C. § 1112(b) provides that a case may be dismissed or converted for cause. Section 1112(b)(4) enumerates certain examples of cause, including "failure to pay any fees or charges required under chapter 123 of title 28." 28 USC § 1930(a)(6) imposed the statutory fees for Chapter 11 cases. Therefore, cause exists to convert the

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CONT... Allied Injury Management, Inc.
case when Chapter 11 quarterly fees are not paid.

Chapter 11

The Chapter 11 trustee states, however, that \$6,000 of the past due fees were paid on June 12, 2017, and that the Chapter 11 trustee will pay the remaining balance.

TENTATIVE RULING

Chapter 11 trustee to inform the Court whether the Chapter 11 quarterly fees have been paid in full.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

United States Trustee (RS)

Represented By
Michael J Bujold
Abram Feuerstein esq
Everett L Green
Mohammad Tehrani

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
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6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01238 Allied Injury Management, Inc. v. De La Llana et al

#32.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01238. Complaint by Allied Injury Management, Inc. against Sylvia De La Llana, Myelin Diagnostics, Sunkist Imaging Medical Center, Shoreline Medical Group, Inc., Paramount Family Health Center, Javier Torres, Justin Paquette, Nor Cal Pain Management Medical Group, Inc., One Stop Multi-Specialty Medical Group & Therapy, Inc.. (Charge To Estate). Complaint for Interpleader and Declaratory Relief Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy
(Dismissed as to Nor Cal Pain Management Medical Group, Inc.)

From: 11/15/16, 12/6/16, 12/20/16, 2/28/17, 4/25/17, 6/27/17, 7/11/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Justin Paquette

Pro Se

Javier Torres

Pro Se

One Stop Multi-Specialty Medical

Pro Se

Nor Cal Pain Management Medical

Pro Se

Paramount Family Health Center

Pro Se

Myelin Diagnostics

Pro Se

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CONT... Allied Injury Management, Inc.

Chapter 11

Sylvia De La Llana Pro Se

Shoreline Medical Group, Inc. Pro Se

Sunkist Imaging Medical Center Pro Se

Plaintiff(s):

Allied Injury Management, Inc. Represented By
Alan W Forsley
Jason Balitzer

Trustee(s):

David M Goodrich (TR) Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
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2:00 PM

6:16-19993 B & B Family, Incorporated

Chapter 11

#33.00 Motion to Value Personal Property and Modify Lien of Comerica Bank and Extinguish Liens of Pioneer Bank, LLC aka FC Marketplace, LLC aka Funding Circle Partners, LLC and Oggie's Pizza and Brewing Co., Inc.

Also #34

EH__

Docket 139

Tentative Ruling:

08/22/2017

BACKGROUND

On November 10, 2016 ("Petition Date"), B&B Family, Incorporated (the "Debtor") filed for chapter 11 relief. The Debtor has three loans that are secured by essentially all personal property assets owned by the Debtor (the "Property"). The following is a list of secured claims in order of priority:

1. Comerica Bank: \$494,123.90;
2. FC Marketplace: \$88,963.76;
3. Oggie's Corporate: \$54,106.12

On July 31, 2017, the Debtor filed its Motion to Value Personal Property and Modify Lien of Comerica Bank and Extinguish Liens of Pioneer Park, LLC aka FC Marketplace, LLC aka Funding Circle Partners, LLC ("FC Marketplace") and Oggie's Pizza & Brewing Co., Inc. ("Oggie's Corporate") (the "Motion"). Service was proper and the Motion is unopposed.

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CONT... B & B Family, Incorporated

Chapter 11

DISCUSSION

Section 506(a) ‘operates to bifurcate [an under] secured creditor's allowed claim into secured and unsecured interests based upon the bankruptcy court's valuation of the secured property. 11 U.S.C. § 506; *In re 1441 Veteran Street Co.*, 144 F.3d 1288, 1291 (9th Cir.1998); *Shook v. CBIC (In re Shook)*, 278 B.R. 815, 822 (9th Cir. BAP 2002).

The Debtor has provided evidence to establish that the current fair market auction value of the Property is \$20,000 (\$50,000 - \$60,000 if the restaurant is sold as a going concern, not including the franchise agreement). (Pope Decl. ¶4). Separately, the Debtor has provided evidence of its CFO, Marianne Richey, by which she approximates the value of the franchise agreement at \$90,000 - \$100,000. (Richey Decl. ¶3). Based on these figures, the Debtor seeks an order:

(1) setting the value of its assets (assuming a sale as a going concern) at \$150,000;

(2) bifurcating the claim of Comerica into a secured claim in the amount of \$150,000 and an unsecured claim in the amount of \$344,123.90;

(3) extinguishing the liens of FC Marketplace and Oggie’s Corporate on confirmation of the plan;

(4) treating the claims of FC Marketplace and Oggie’s Corporate as general unsecured non-priority claims in accordance with the terms of the proposed plan; and

(5) providing that on payment of the \$150,000 in full of Comerica’s claim, that the lien of Comerica will become void and will no longer constitute an encumbrance against the Property.

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CONT... B & B Family, Incorporated

Chapter 11

Here, the Debtor has provided sufficient evidence to establish a value of \$150,000 for all of its assets. Comerica, Oggie’s Corporate and FC Marketplace, though properly served, have not filed any response or opposition to the proposed valuation. Based on the foregoing, the Court finds that the Debtor’s proposed valuation is appropriate pursuant to § 506(a), that pursuant to § 502, the claims of Oggie’s Corporate and FC Marketplace are allowed as fully unsecured claims only, and that the claim of Comerica is allowed as a secured claim in the amount of \$150,000 and as an unsecured claim in the amount of \$344,123.90 .

TENTATIVE RULING

For the foregoing reasons, the Motion is GRANTED in its entirety.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

B & B Family, Incorporated

Represented By
Todd L Turoci

Movant(s):

B & B Family, Incorporated

Represented By
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci

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6:16-19993 B & B Family, Incorporated

Chapter 11

#34.00 Motion to Disallow Proof of Claim Number 6

Also #33

EH__

Docket 128

Tentative Ruling:

08/22/2017

Background:

On November 10, 2016 ("Petition Date"), B&B Family, Incorporated (the "Debtor") filed for chapter 11 relief.

On July 19, 2017, the Debtor filed an Objection to Claim No. 6 (the "Objection") of Commerce & Industry Insurance Company, Lexington Insurance Company, and Other Subsidiaries of AIG Property Casualty, Inc. ("Claimant"). The Objection was served on Claimant at the address it has provided on Claim No. 7 where notices should be sent and pursuant to FRBP 7004. No opposition has been filed.

Claim #: 6

Amount: \$16,707

Objection:

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CONT... **B & B Family, Incorporated**

Chapter 11

The Debtor objects to the claim on the grounds that the claim is beyond the statute of limitations under state law.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *United States v. Offord Fin., Inc., (In re Medina)*, 205 B.R. 216,222 (9th Cir. BAP 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *Ashford v. Consol. Pioneer Mort. (In re Consol. Pioneer Mort.)*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *Lundell*, 223 F.3d at 1039; *Holm*, 931 F.2d at 623.

Analysis:

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CONT... B & B Family, Incorporated

Chapter 11

Rebuttal of the Prima Facie Proof of Claim

In this case, the Debtor asserts that Claims No. 6 should be disallowed as time barred. Section 502(b)(1) provides that a claim is deemed allowed, unless such claim is unenforceable against the debtor and property of the debtor under applicable law. The statute of limitations applicable to common counts is four years if the action is founded upon a contract or other writing (e.g., "book account" (§ 3:398), "account stated" (§ 3:400), or money lent on a note), and the statute of limitations is generally four years from the date of the last item in the account. CCP § 337(1),(2); Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co., 116 CA 4th 1375, 1396, FN. 9 (Cal. App. 2004). Here, page 7 attached to Claim No. 6, indicates that at least two of the policies expired or were otherwise terminated in 2008 and 2009. As two these two policies, the Debtor has met its burden of demonstrating that the claim is unenforceable under state law because it appears that Claimant is seeking to enforce the claims for these terminated policies after the statute of limitations has lapsed. The burden now shifts to Claimant. Claimant, however, though properly served, has failed to offer any opposition which this Court deems as consent to the granting of the requested relief pursuant to LBR 9013-1(h).

As to the third policy, it is does not appear that Claimant is asserting any prepetition claim. The Court's review of the Claim indicates that the amounts asserted by Claimant as unpaid related only to the 2008 and 2009 policies (\$9,633 + \$7,074 = 16,707). (Claim No. 6 at pp 8-9). Thus, the objection appears unnecessary as to any 2016 policy.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to SUSTAIN the Debtor's objection as to the \$16,707 related to the 2008 and 2009 policies. Claim No. 6 is disallowed in its entirety.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

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CONT... B & B Family, Incorporated

Chapter 11

Debtor(s):

B & B Family, Incorporated

Represented By
Todd L Turoci

Movant(s):

B & B Family, Incorporated

Represented By
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci

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6:17-11053 Rio Rancho Super Mall LLC

Chapter 11

#35.00 Motion for Valuation of Security Interest in Real Property

Also #36 & #37

EH__

Docket 80

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

Movant(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

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6:17-11053 Rio Rancho Super Mall LLC

Chapter 11

#36.00 CONT Disclosure Statement hearing

From: 7/25/17

Also #35 & #37

EH__

Docket 0

Tentative Ruling:

08/22/2017

I. BACKGROUND

Rio Rancho Super Mall, LLC ("Debtor") is a California Limited Liability Corporation. Debtor owns and operates a commercial property, Rio Rancho Super Mall, located at 25211 Sunnymead Blvd., Moreno Valley, CA 92553 ("Property"). The Property is improved with a commercial building (approx. 100,750 sq. ft.) with retail space for 87 retail tenants. On February 13, 2017, Debtor filed a voluntary Chapter 11 Petition. This is the Debtor's second chapter 11 case. The Debtor's prior case was dismissed on December 27, 2016, based on the Debtor's material default in its compliance with the terms of the previously confirmed chapter 11 plan.

Related Documents:

- On August 2, 2017, Debtor filed its First Amended Disclosure Statement (Redlined) (Docket #88) and its First Amended Chapter 11 Plan of Reorganization (Redlined) (Docket #89).
- On August 8, 2017, creditor Butterfield Valley Parnters filed its Opposition/Objection to the First Amended Disclosure Statement and First Amended Plan (Docket #93).
- On August 9, 2017, creditor Pacific City Bank filed its Limited Joinder to the Objection of Butterfield

Ownership and Management of Debtor:

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CONT...

Rio Rancho Super Mall LLC

Chapter 11

Debtor has two owners

1. Eric Sang Yul Kim ("Mr. Kim") is the managing member and owns 87.5%
2. Kwan Sung Kim ("Mrs. Kim"), Debtor's wife, owns the remaining 12.5%

The Debtor is managed by Dennis Park and Kwang Sung Kim. Mrs. Hyang Hwa Kim is the sister of Eric Sang Yul Kim and is providing uncompensated services to the Debtor. The Debtor proposes to begin paying Mrs. Hyang Kim a regular salary of \$3,000 per month "if the market is stable".

DSD:

Debtor's primary secured creditor is DSD Note Investors, Inc. ("DSD") which the Debtor asserts fully encumbers the Property. On January 31, 2017, DSD filed a complaint for breach of contract and foreclosure and also moved the Superior Court for the appointment of a receiver.

Motivation for filing a Chapter 11:

Debtor contends that the instant filing was precipitated by the dismissal of its prior case due, in part, to poor market conditions which did not sufficiently improve, and due also to problems with the Debtor's confirmed plan which failed to account for certain liens; and also due to the aggressive collection efforts of DSD.

II. DISCUSSION

Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

"Adequate information" means information of a kind, and in sufficient detail, so 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 the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to

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CONT... **Rio Rancho Super Mall LLC**

Chapter 11

provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bankr. N.D.Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *In re Michelson*, 141 B.R. 715, 718-19 (Bankr. E.D.Cal. 1992).

Courts have developed lists of relevant factors for the determination of adequate disclosure. *See, e.g., In re A.C. Williams Co.*, 25 B.R. 173, 176 (Bankr. N.D. Ohio 1982), *In re Ferretti*, 128 B.R. 16, 18–19 (Bankr. D.N.H. 1991), *In re Malek*, 10 C.B.C.2d 189, 35 B.R. 443, 443–44 (Bankr. E.D. Mich. 1983), *In re Metrocraft*, 39 B.R. 567, 568 (Bankr. N.D.Ga. 1984), *In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 170–71 (Bankr. S.D. Ohio 1988), *In re U.S. Brass Corp.*, 194 B.R. 420, 424–25 (Bankr. E.D. Tex. 1996).

This Court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D.Pa. 1982).

PLAN SUMMARY

The Debtor proposes an Effective Date of November 1, 2017

Funding

Debtor intends to fund the plan with regular business income estimated by the Debtor at approximately \$110,920 per month. As of August 1, 2017, Debtor anticipates generating monthly gross rental income of \$123,197 from an increase in rent.

Debtor asserts it will have \$45,000 on the Effective Date from rental income and capital contributions

Administrative Claims: (Unimpaired)

Paid in full on Effective Date

· Law Offices of Langley & Chang:	\$25,000
· Clerk's Office:	\$0
· <u>US Trustee Fees:</u>	<u>\$975</u>
Total:	\$25,975

Priority Tax Claims: (Unimpaired)

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CONT... **Rio Rancho Super Mall LLC**

Chapter 11

Paid in full on Effective Date

· CA Franchise Tax Board:	\$800
· <u>IRS</u>	<u>\$2,711.88</u>
Total:	\$3,511.88

Class 1: DSD Note Investors, LLC (Impaired)

- Principal balance/allowed claim: \$12,000,000
- Secured claim allowed per stipulation including agreement by DSD to extend loan maturity date (notwithstanding Debtor assertion that Property value is \$7,000,000).
- Terms: \$55,000 per month at 5.75% interest for 48 months
 - Additional quarterly payments of \$7,500 per quarter for 48 months, thereafter loan is due in full.

Class 2: Riverside County Tax (Impaired)

- Principal balance/allowed claim: \$295,813
- Terms: \$5,330.11 per month at 18% interest for 120 months

Class 3: General Unsecured Creditors (Impaired)

- Debtor proposes to pay 0% (i.e. no payments to general unsecured creditors).

Class 4: Equity Interest Holders

- Mr. Kim and Mrs. Kim will retain their interests

New Value

At confirmation, the equity holders will make a one-time capital contribution of \$35,000

Liquidation Value

Debtor estimates its liquidation value is \$7,028,400 and thus after payment of the secured claim of DSD in the amount of \$12,000,000 and even assuming funds are available to pay administrative claims and priority tax claims, no funds would remain for other creditors.

Feasibility

1. EFFECTIVE DATE

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2:00 PM

CONT... Rio Rancho Super Mall LLC

Chapter 11

Debtor will fund the plan through regular business income and the cash contribution. Debtor states it will have \$45,000 on effective date to pay \$29,486.88 due on Effective Date.

· Cash on hand:	\$10,000 (DIP Account)
· <u>Capital Contributions:</u>	<u>\$35,000</u>
Total:	\$45,000

Balance remaining after paying initial amount of Effective Date: \$15,513.12

2. FEASIBILITY THROUGHOUT LIFE OF PLAN

The Debtor asserts it will have \$123,197 in gross monthly income from rents. It estimates expenses plus plan payments will cost Debtor \$123,152.11 per month. At this level, the Debtor is expected to have an approximate shortfall of \$44.89 per month.

III. OBJECTIONS

All objections were timely filed. The Debtor has filed no replies.

Butterfield Objections

1. Butterfield disputes that DSD can assert any claim greater than \$10,422,000 per the limitations contained in the DSD Deed of Trust;
2. Butterfield seeks additional language to make clear that the Plan will not place limits on the "ongoing effectiveness of the CAM Agreement"
3. Objects to being classified as a "unsecured" claimant where the motion to value has not yet been resolved and objects because the Plan makes no reference to the claim of Butterfield asserted in its proof of claim - \$741,664.74 (the Redline DS, Exhibit F fails to indicate the amounts of filed claims although several have been filed since the drafting of the original DS)
4. Butterfield also appears to object to any DS which does not provide for the contingency that at least some junior lienholders, including itself, may be fully or partially secured depending on the outcome of the motion to value.

Pacific City Bank Objections

1. PCB joins Butterfield's objection that the maximum value that DSD can assert as a first priority lienholder is \$10,422,000

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Chapter 11

Tentative Ruling:

08/22/2017

Debtor's Disclosure Statement and Plan are defective for the following reasons:

1. The Debtor refers to Mrs. Kwang Sung Kim as "Kwan Sun Kim" in the introductory paragraph to the DS. One of these spellings contains typos;
2. Based on the terms indicated by the Debtor for payment of DSD's claim, it appears that the Debtor anticipates making a balloon payment to DSD at the end of the plan. The Plan should clearly indicate the Debtor's estimate of how large this payment will be and the source of funding to pay the balloon payment;
3. On page 20, under the section entitled "C. Feasibility", the DS did not indicate that priority tax claims will also be paid on the Effective Date, which would alter the Debtor's calculation of the balance of cash after making payment due on the Effective Date.
4. The current projections of the plan indicate there will be a monthly shortfall of approximately \$44.89 per month (not including the 18% interest due to Riverside County on a monthly basis which is not accounted for in the Debtor's 5-Year Projection). This shortfall is particularly problematic where the Debtor is expected to make an additional quarterly payment to DSD of \$7,500 until the end of the plan, plus a balloon payment of as yet unspecified amount at the end of the plan.

Based on the foregoing, the Court's tentative ruling is to CONTINUE the hearing on approval of the First Amended DS to the date of the expected evidentiary hearing on the related Motion to Value for: (1) Debtor to address the issues raised by the Court; (2) for a determination of how the outcome of the Motion to Value hearing will impact the need for further revisions to the DS.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

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6:17-11053 Rio Rancho Super Mall LLC

Chapter 11

#37.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 3/28/17, 5/30/17, 7/25/17

Also #35 & #36

EH__

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

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10:00 AM

6:17-12964 Raul L Amaya and Leslie Amaya

Chapter 7

#1.00 Pro se Reaffirmation Agreement Between Debtor and Navy Federal Credit Union re 2012 Dodge Ram in the amount of \$25,595.14

EH__

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raul L Amaya

Represented By
Daniel King

Joint Debtor(s):

Leslie Amaya

Represented By
Daniel King

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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10:00 AM

6:17-12875 Chris J. Hoisington

Chapter 7

#2.00 Pro se Reaffirmation Agreement Between Debtor and LBS Financial Credit Union
re: 2011 Dodge Ram 1500 \$9807.44

EH__

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chris J. Hoisington

Represented By
James D. Hornbuckle

Trustee(s):

Karl T Anderson (TR)

Pro Se

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11:00 AM

6:17-15159 Tena Renee Fry

Chapter 7

#3.00 Order to show cause re dismissal for failure to comply with rule 1006(B)-
Installments

EH__

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tena Renee Fry

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:17-15816 Integrated Wealth Management Inc

Chapter 7

#4.00 Motion for Order Restricting Debtor's use of Corporate Funds

Also #5

EH__

Docket 6

***** VACATED *** REASON: CONTINUED TO 10/3/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

Movant(s):

Mark Hayek

Represented By
Erwin J Shustak

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6:17-15816 Integrated Wealth Management Inc

Chapter 7

#5.00 CONT Status Conference RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual

From: 8/16/17

Also #4

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 10/3/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

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6:17-15478 Denise Lynn Valeski

Chapter 7

#6.00 Motion For Order Compelling Attorney To File Disclosure Of Compensation Pursuant To 11 U.S.C. § 329

EH__

Docket 15

Tentative Ruling:

8/23/17

BACKGROUND

On June 29, 2017, Denise Valeski ("Debtor") filed a Chapter 7 voluntary petition. On July 5, 2017, the case was dismissed for failure to file a creditor's matrix. Subsequently, on July 21, 2017, Debtor filed a motion to reconsider dismissal, which is set for hearing on August 30, 2017.

On July 14, 2017, UST filed a motion for an order compelling attorney to file disclosure of compensation pursuant to 11 U.S.C. § 329.

DISCUSSION

11 U.S.C. § 329(a) states:

Any attorney representing a debtor in a case under this title, or in connection

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CONT...

Denise Lynn Valeski

Chapter 7

with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

Fed. R. Bankr. P. Rule 2016(b) provides further details regarding the requirements imposed by § 329. Here, Debtor's counsel has failed to file the required disclosure of compensation. The Court has authority to enter an order directing the disclosure of such compensation, and will direct Debtor's counsel to file the required disclosure. *See, e.g., In re Shuma*, 124 B.R. 668, 677 (Bankr. W.D. Pa. 1991).

TENTATIVE RULING

It appears that Debtor's attorney filed the Statement of Attorney Compensation. Therefore, it appears that the matter is MOOT.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Denise Lynn Valeski

Represented By
Gordon L Dayton

Movant(s):

United States Trustee (RS)

Represented By
Abram Feuerstein esq

Trustee(s):

Robert Whitmore (TR)

Pro Se

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6:17-16139 Alpine Industries LLC

Chapter 7

#7.00 Order to show cause re dismissal for lack of counsel

EH__

Docket 6

***** VACATED *** REASON: CASE DISMISSED 8/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alpine Industries LLC

Pro Se

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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Central District of California
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11:00 AM

6:17-15077 Claudia Acevedo

Chapter 7

#8.00 Motion For Sanctions for Violation of the Automatic Stay By GW San Diego Properties, LLC and Wells Fargo Bank, National Association

EH__

Docket 15

Tentative Ruling:

8/23/17

PROCEDURAL BACKGROUND

On June 19, 2017, Claudia Acevedo ("Debtor") filed a Chapter 7 voluntary petition. On July 7, 2017, the case was dismissed for failure to file case commencement documents. On July 31, 2017, Debtor filed a motion for remedies for violation of stay by GW San Diego Properties, LLC ("GW"), and Wells Fargo Bank, National Association ("Wells Fargo"). On August 9, 2017, Wells Fargo filed its opposition.

FACTUAL BACKGROUND

The motion at issue relates to the foreclosure sale of certain property located at 16462 Ridge Field Drive, Riverside, CA 92503 (the "Property"). A brief history of the property is necessary to understand the respective rights in the Property.

On June 23, 2006, Carlos Vera ("Vera") obtained the property through a loan from Wells Fargo. On October 20, 2006, Vera executed a grant deed, conveying the Property to Jose Guerrero ("Guerrero"). The deed was recorded on May 25, 2007. A

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Claudia Acevedo

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notice of default was issued on January 26, 2009, and recorded on January 29, 2009. During the first half of 2010, Guerrero filed three bankruptcies, all of which were summarily dismissed, and Vera filed one, in which Wells Fargo obtained relief from stay.

On May 23, 2012, Guerrero executed a grant deed, conveying the Property to himself and Jose Jimenez ("Jimenez") as joint tenants, one day before a scheduled foreclosure sale. Jimenez had, at the time, a pending Chapter 13 bankruptcy. On August 8, 2012, Guerrero executed another grant deed, conveying his interest to HACBED, Inc. ("HACBED"). The grant deed was recorded on January 19, 2013.

On October 16, 2016, Guerrero filed another bankruptcy, which was, again, summarily dismissed. A second foreclosure sale was later scheduled for June 19, 2017. Earlier, on May 14, 2017, HACBED executed a warranty deed, transferring a 10% interest in the Property to Debtor. The warranty deed was recorded on June 29, 2017. Less than three weeks later, Debtor filed the instant bankruptcy case the same day as the foreclosure, which was summarily dismissed. The bankruptcy case was filed a matter of minutes after the recording of the deed from HACBED and a matter of minutes before the scheduled foreclosure sale. Debtor faxed a notice of the bankruptcy filing to Wells Fargo three minutes before the scheduled foreclosure sale. Debtor also states that telephonic notice was provided to Wells Fargo prior to the sale, but a specific time is not provided.

After the foreclosure sale was held, on June 27, 2017, GW filed an unlawful detainer case in state court. Debtor requests the reconveyance of the property, dismissal of the unlawful detainer action, \$10,000 in punitive damages, and \$2,755 in actual damages.

DISCUSSION

11 U.S.C. § 362(a)(3), (4) states

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(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of –

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate

(5) any act to create, perfect, or enforce any lien against property of the estate

Debtor argues that Wells Fargo and GW violated the automatic stay through holding a post-petition foreclosure sale, and, subsequently filing an unlawful detainer action, respectively. Wells Fargo raises the following four arguments in opposition to Debtor's motion: (1) that Debtor did not have an interest in the Property; (2) there is cause for annulment of the automatic stay; (3) Wells Fargo's actions were not willful; and (4) no damages were suffered.

I. Property Interest

The basis for Wells Fargo's argument that Debtor did not have an interest in the Property is unclear. It appears to hinge on the following assertion, from page 7 of the opposition: "Vera transferred his entire interest to Guerrero, who in turn transferred his entire interest to himself and Jimenez as joint tenants. Therefore, Guerrero could not transfer the entire interest to HACBED without Jimenez also transferring his joint tenant interest." The grant deed transferring an interest in the Property to HACBED does not, however, purport to transfer the entire interest in the Property, but, instead, states that the grantor, Guerrero, is transferring the entirety of *his* interest. Even if Guerrero had attempted to also transfer the interest of Jimenez, that would not render the entire grant deed void, but would simply result in a finding that the attempt to transfer Jimenez's interest was void.

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II. Annulment of Automatic Stay

11 U.S.C. § 362(d) permits a court to retroactively annul, modify, or condition the automatic stay. *See, e.g., In re Schwartz*, 954 F.2d 569, 572-73 (9th Cir. 1992). As Wells Fargo asserts, if a court retroactively annuls the automatic stay with respect to specific actions, then those actions would cease to be a violation of the automatic stay.

Wells Fargo sets forth, in detail, its argument why cause exists for annulment of the automatic stay. An opposition to a motion is not, however, the appropriate place to request that relief. Because of due process concerns, the Court will continue Debtor's motion for sanctions and equitable relief to allow Wells Fargo to file, and set for hearing, a motion to annul the stay.

III. GW

GW has not filed any opposition to the motion under consideration. Debtor contends that GW violated the automatic stay through the filing of an unlawful detainer action eight days after Debtor's commencement of the instant bankruptcy proceeding. If the filing of the unlawful detainer action is, in fact, a violation of the automatic stay, and, therefore, void, the consequence would not be a reconveyance of the Property. To obtain a reconveyance of the Property, Debtor must establish that the foreclosure sale conducted by Wells Fargo was a violation of the automatic stay. Nevertheless, the remainder of Debtor's requested remedies may be applicable if Debtor is successful in its motion with regard to GW, but unsuccessful in its motion with regard to Wells Fargo.

As noted by Wells Fargo, however, § 362(k) imposes a requirement that a violation be willful in order for an aggrieved debtor to recover damages. 11 U.S.C. § 362(k)(1). Generally, the willfulness requires the presence of two factors: (1) the party knows of the automatic stay; and (2) the actions taken in violation of the automatic were intentional. *See, e.g., Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir.

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CONT...

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Chapter 7

2002). Here, there is no evidence in the record that GW knew of the bankruptcy filing. Instead it appears that Debtor only notified Wells Fargo of the commencement of the bankruptcy. Therefore, Debtor has failed to provide evidence establishing that the requirements of § 362(k)(1) are satisfied.

Debtor also requests that GW "be ordered to dismiss the unlawful detainer case." As noted by Debtor, an act that violates the automatic stay is void. *See, e.g., In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 2002). "This rule applies to judicial proceedings." *Leetien*, 309 F.3d at 1215; *see also In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir. 2000). Therefore, GW's filing of the unlawful detainer action may be void, and the state court may have lacked jurisdiction over the unlawful detainer action. *See In re Gruntz*, 202 F.3d at 1083 ("[A] reverse *Rooker-Feldman* situation is presented when state courts decide to proceed in derogation of the stay, because it is the state court which is attempting impermissibly to modify the federal court's injunction.). If the state court lacked jurisdiction to hear the unlawful detainer, then the unlawful detainer action must be dismissed.

If Wells Fargo is successful, however, in annulling the stay, however, then the foreclosure sale of June 19, 2017, will be valid. If the foreclosure sale is valid, then it would appear that the automatic stay provisions cited by Debtor, § 363(a)(3) & (5), would not be applicable, since the Property, at the time of the filing of the unlawful detainer action, would not have been property of the debtor or property of the estate. Furthermore, § 362(a)(1) would be inapplicable, because the foreclosure sale having been held post-petition, GW's unlawful detainer action is not an action that "could have been commenced before the commencement" of the bankruptcy case. Therefore, the validity of the unlawful detainer action filed by GW depends upon Wells Fargo's success in obtaining annulment of the automatic stay.

TENTATIVE RULING

The Court is inclined to CONTINUE the matter for Wells Fargo to file a motion to annul the automatic stay.

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APPERANCES REQUIRED.

Party Information

Debtor(s):

Claudia Acevedo

Represented By
Richard McAndrew

Movant(s):

Claudia Acevedo

Represented By
Richard McAndrew

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:17-14315 Lyne Tan Aguilar

Chapter 7

#9.00 Motion for fine and/or disgorgement of fees against bankruptcy petitioner
Notice Of Motion And Motion For The Entry Of An Order Disgorging Fees And
Imposing Fines Against Bankruptcy Petition Preparers Michael Landrum And
Time Lawyers

EH__

Docket 12

Tentative Ruling:

8/23/17

BACKGROUND

On May 23, 2017, Lyne Aguilar ("Debtor") filed a voluntary Chapter 7 petition.

On July 28, 2017, UST filed a motion for the entry of an order disgorging fees and imposing fines against bankruptcy petition preparers Michael Landrum ("Landrum") and Time Lawyers, requesting an aggregate of \$22,100. According to UST's motion, Landrum failed to identify himself on the prepared documents, provided Debtor legal advice, and engaged in prohibited advertising using the word "legal".

DISCUSSION

I. *Bankruptcy Petition Preparer*

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11 U.S.C. § 110(a)(1) defines "bankruptcy petition preparer" as "a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing." "Document for filing" is defined as "a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title. *Id.*

Here, UST has provided the declaration of Debtor stating that Landrum prepared a document for filing, and was compensated for such preparation. Furthermore, there is no direct evidence that Landrum is an attorney, or works under the supervision of an attorney. Therefore, Landrum is a bankruptcy petition preparer subject to the requirements of § 110.

II. Identification of BPP

11 U.S.C. § 110(b)(1) requires bankruptcy petition preparers to place their name and address on documents they prepare for filing. Furthermore, 11 U.S.C. § 110(c) requires individual bankruptcy petition preparers to include their social security number on documents they prepare for filing. Finally, 11 U.S.C. § 110(h)(2) provides that a bankruptcy petition preparer must disclose compensation received from the debtor within the previous twelve months.

Here, UST has provided the declaration of Debtor which suggests¹ that Landrum prepared the entirety of the bankruptcy paperwork in this case. Furthermore, UST has provided authenticated copies of the filed documents, establishing that Landrum did not identify himself in any form on the filed documents, or disclose the compensation he received.

III. Misleading Advertising

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11 U.S.C. § 110(f) states: "[a] bankruptcy petition preparer shall not use the word 'legal' or any similar term in any advertisements, or advertise under any category that includes the word 'legal' or any similar term."

Here, UST has provided Landrum's business card which is titled "Time Lawyers," identifies Landrum as a "license paralegal," identifies his email as timelawyers@aol.com, and states "Trial Lawyers Association Member" and "Bar License by American Bar Association." This egregiously false advertising is clearly a violation of § 110(f).

IV. Legal Advice

11 U.S.C. § 110(e)(2)(A) states: "[a] bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B)." 11 U.S.C. § 110(e)(2)(B) identifies several common categories of advice that fit within the definition of legal advice in the context of § 110(e)(2).

Here, UST states that "Landrum unlawfully provided legal advice by completing the documents for the Debtor, explaining them, and then instructing her to sign the petition even though she did not understand the documents." It is not clear whether the last two categories, explaining documents and instructing Debtor to sign documents, constitute legal advice in this case. Furthermore, it is not clear that completing the documents for Debtor constitutes "advice" in any sense. Nevertheless, it would be illogical to conclude that a bankruptcy petition preparer is prohibited from advising a debtor regarding how to characterize property, but is permitted to unilaterally characterize the property. Therefore, the Court interprets Landrum's completion of the documents as legal advice, and Debtor's signing of the documents to be Debtor's acceptance of Landrum's legal advice.

V. Damages

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First, Section 110(i)(1) states:

(i)(1) If a bankruptcy petition preparer violates this section or commits any act that that the court finds to be fraudulent, unfair, or deceptive, on the motion of the debtor, trustee, United States trustee (or the bankruptcy administrator, if any), and after notice and a hearing, the court shall order the bankruptcy petition preparer to pay to the debtor-

(A) the debtor's actual damages;

(B) the greater of—

(i) \$2,000; or

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

(C) reasonable attorneys' fees and costs in moving for damages under this subsection.

The use of the word 'shall' in § 110(i)(1) indicates that the bankruptcy court has no discretion in deciding whether to impose statutory damages of \$2,000 once it found a violation of § 110. First, however, the Court must determine that Ortega committed a "fraudulent, unfair, or deceptive" act. *See, e.g., In re Doser*, 412 F.3d 1056, 1064 (9th Cir. 1005); *see also In re Kangaroo*, 250 B.R. 115 (Bankr. C.D. Cal 2000). Engaging in the unauthorized practice of law has routinely been held to be a "fraudulent, unfair, or deceptive" act under the statute. *See, e.g., In re Monson*, 522 B.R. 340, 355 (Bankr. D. Utah 2014) ("Offering legal advice to debtors can constitute a fraudulent, unfair or deceptive act within the context of § 110(i)(1).") (collecting cases); *In re Bagley*, 433 B.R. 325, 334 (Bankr. D. Mont. 2010). Furthermore, given that Landrum provided Debtor with a business card blatantly misrepresenting his credentials, the Court concludes that Landrum has engaged in a "fraudulent, unfair, or deceptive" act," and, therefore, the \$2,000 damages requested are appropriate.

Second, 11 U.S.C. § 110(h)(3)(B) states: "[a]ll fees charged by a bankruptcy petition

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CONT... **Lyne Tan Aguilar**

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preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g)."

Here, UST has requested the disgorgement of \$600, \$300 received by Landrum for this case, and \$300 received by Landrum for the filing of a previous case, within the prior twelve months. The plain language of the statute is not unambiguous regarding whether the Court can order disgorgement of compensation received in an earlier case. Courts have previously utilized the provision to order disgorgement of fees received in other cases. *See, e.g., In re Bagley*, 433 B.R. 325, 334 (Bankr. D. Mont. 2010). Here, however, the Court will reach the same result through a more clearly applicable provision, § 110(h)(3)(A)(i), which allows the Court to order disgorgement of fees received in the previous twelve months which were defective in light of the services provided. Here, Landrum received \$300 for filing a facially defective petition that was summarily dismissed. The Court considers the value of Landrum's services in the previous case to be worth \$0, and, therefore, disgorgement is appropriate. *See, e.g., In re Pilot*, 286 B.R. 157, 162 (Bankr. C.D. Cal. 2002) ("Because of the unauthorized practice of law, the reasonable value of the services provided is zero.").

Third, 11 U.S.C. § 110(l)(1) provides: "[a] bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than \$500 for each such failure." The quoted provision instructs the Court to determine how many violations of the enumerated subsections have occurred, and multiply the number of violations by \$500. UST asserts that, in this case, there are thirteen such violations. Implicit in UST's calculation is that multiple violations of the same subsection are aggregate, as is one document's violation of multiple subsections.

The statute is unclear regarding the method by which the number of violations is to be determined. There are two questions critical to the resolution of this issue: (1) whether multiple documents or acts that violate the same provision constitute multiple violations; and (2) whether one document or act that violates multiple provisions constitutes multiple violations. Some courts have answered in the affirmative to both questions, rapidly multiplying the assessed fine. *See, e.g., In re Bowyer*, 489 B.R. 798, 814 (Bankr. N.D. Ind. 2013) (fifty-four violations); *In re Bradshaw*, 233 B.R. 315, 332-34 (Bankr. D.N.J. 1999) (193 total violations). Other courts seem to have answered in the negative to both questions, and based their finding on the number of enumerated subsections violated, regardless of how many times it may have been

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violated. *See, e.g., In re France*, 271 B.R. 748, 757 (Bankr. E.D.N.Y. 2002); *In re Chamberland*, 190 B.R. 972, 977 (Bankr. M.D. Fla. 1996); *see also In re Kangaroo*, 250 B.R. 115, 125 (Bankr. C.D. Cal. 2000) ("In accordance with the authorities, this court orders Arotionians to pay a fine of \$500 for each subsection violated.").

Endorsing the principle that one document can constitute multiple violations, and one provision can be violated multiple times, would create a situation where the number of violations is essentially uncountable. While the number of documents filed can be easily ascertained, the other primary subsections, relating to providing legal advice and legal advertising, are more difficult to assess. *See, e.g., In Monson*, 522 B.R. 340, 355 (Bankr. D. Utah 2014) (each instance of providing legal advice is a separate violation). Here, as noted above, the Court has concluded that the completion of the case commencement documents constituted the providing of legal advice. Under the theory that a subsection can be violated multiple times, the case commencement documents filed in this case could be considered to constitute hundreds of violations. And it is plausible to speculate that § 110(f), relating to misleading advertising, could have been violated on dozens, if not hundreds, of occasions. While the Court does not believe the requested relief to be necessarily excessive in this case, the reasonableness of the relief requested does not, *a priori*, determine the reasonableness of the principle upon which the relief is based. The principle implicitly adopted here is simply untenable.

The Court acknowledges that 11 U.S.C. § 110 was designed to remedy the perceived abuses committed by bankruptcy petition preparers. 2 Collier on Bankruptcy ¶ 110.01 (16th ed. 2015) ("[S]ection 110 was enacted to remedy what was perceived to be widespread fraud and unauthorized practice of law by non-attorneys who prepared bankruptcy documents for consumer debtors.") (*citing In re Crawford*, 194 F.3d 954 (9th Cir. 1999)). Yet, ballooning the fees to be paid to UST does not seem to be the appropriate remedy. Therefore, the Court concludes that the number of violations is equivalent to the number of subsections violated (in this case five). The Court finds that UST has demonstrated the applicability of § 110(l)(2)(d), and, therefore, the statutory fine will be tripled, resulting in a fine of \$7,500. Furthermore, in light of the egregious misrepresentations by Landrum on his business card, the Court will issue an order to show cause why Landrum should not be enjoined from serving as a bankruptcy petition preparer in the future.

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TENTATIVE RULING

The Court is inclined to GRANT the motion in the reduced amount of \$10,100, of which \$2,600 is to be payable to Debtor, and \$7,500 is to be payable to the United States Trustee and will issue an order to show cause why Michael Landrum should not be enjoined as a bankruptcy petition preparer.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Lyne Tan Aguilar

Pro Se

Movant(s):

United States Trustee (RS)

Represented By

Abram Feuerstein esq

Trustee(s):

Charles W Daff (TR)

Pro Se

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6:17-14060 Mayra Huerta

Chapter 7

#10.00 Motion Of United States Trustee For An Order Disgorging Fees, Assessing Damages, And Imposing Fines Against Bankruptcy Petition Preparer Ricardo Lopez And The Paralegal Group

EH__

Docket 10

Tentative Ruling:

8/23/17

BACKGROUND

On May 15, 2017, Mayra Huerta ("Debtor") filed a Chapter 7 voluntary petition. The initial case documents included a declaration of bankruptcy petition preparer and a disclosure of compensation of bankruptcy petition preparer, both completed by Ricardo Lopez ("Lopez").

On July 26, 2017, UST filed a motion for an order disgorging fees, assessing damages, and imposing fines against Lopez and the Paralegal Group pursuant to 11 U.S.C. § 110, requesting an aggregate of \$3,200. According to UST's motion, Lopez prepared Debtor's bankruptcy documents and provided Debtor legal advice regarding classification of claims and selection of exemptions. UST further asserts that Lopez has been enjoined as a bankruptcy petition preparer since July 27, 2016.

DISCUSSION

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I. Bankruptcy Petition Preparer

11 U.S.C. § 110(a)(1) defines "bankruptcy petition preparer" as "a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing." "Document for filing" is defined as "a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

Here, Lopez's completion and filing of the declaration of bankruptcy petition preparer and the disclosure of compensation of bankruptcy petition preparer establish that he is a bankruptcy petition preparer subject the requirements of § 110.

II. Advertisement of Legal Services

11 U.S.C. § 110(f) states: "[a] bankruptcy petition preparer shall not use the word 'legal' or any similar term in any advertisements, or advertise under any category that includes the word 'legal' or any similar term." Here, UST argues that Lopez's use of the name "Paralegal Group" on his business card constitutes a violation of § 110(f).

The Bankruptcy Appellate Panel of the Ninth Circuit has previously stated"

Several courts, including the Panel, have held that a BPP's use of the word "paralegal" violates § 100(f), not only because it actually contains the prohibited word "legal," but also because it promotes the BPP's specialized legal expertise or knowledge and misleads lay persons into believing legal services are being provided.

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In re Wojcik, 560 B.R. 763, 770 (B.A.P. 9th Cir. 2016) (collecting cases). The Court agrees, and finds that the use of "paralegal" in advertising violates the requirements of § 110(f). Furthermore, the Court finds that the distribution of business cards constitutes an advertisement. Therefore, Lopez has violated § 110(f).

III. Legal Advice

11 U.S.C. § 110(e)(2)(A) states: "[a] bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B)." 11 U.S.C. § 110(e)(2)(B) identifies several common categories of advice that fit within the definition of legal advice in the context of § 110(e)(2). The authenticated transcript of Debtor's meeting of creditors establishes that UST questioned Debtor concerning whether Lopez has provided the advice prohibited by § 110(e)(2)(B). Debtor, in response to the several of the questions, stated that Lopez had, in fact, provided the prohibited advice. Therefore, Lopez has violated § 110(e).

11 U.S.C. § 110(l)(1) provides for a discretionary fine of up to \$500 for a violation of § 110(e). Given that Lopez provided a variety of prohibited legal advice, and given the lack of any opposition to the motion, the Court finds the requested fine to be reasonable.

IV. Disgorgement of Compensation

11 U.S.C. § 110(h)(3)(B) provides the Court with discretion to order disgorgement of compensation received when a bankruptcy petition fails to comply with § 110(b)-(g). Here, as noted above, Lopez failed to comply with the statutory requirements. Given that this is not Lopez's first violation of the requirements for bankruptcy petition preparers, and given the lack of opposition to UST's motion, the Court finds disgorgement of the \$200 received to be appropriate.

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V. *Statutory Damages*

Section 110(i)(1) states:

(i)(1) If a bankruptcy petition preparer violates this section or commits any act that that the court finds to be fraudulent, unfair, or deceptive, on the motion of the debtor, trustee, United States trustee (or the bankruptcy administrator, if any), and after notice and a hearing, the court shall order the bankruptcy petition preparer to pay to the debtor-

(A) the debtor's actual damages;

(B) the greater of—

(i) \$2,000; or

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

(C) reasonable attorneys' fees and costs in moving for damages under this subsection.

The use of the word 'shall' in § 110(i)(1) indicates that the bankruptcy court has no discretion in deciding whether to impose statutory damages of \$2,000 once it found a violation § 110(f). First, however, the Court must determine that Ortega committed a "fraudulent, unfair, or deceptive" act. *See, e.g., In re Doser*, 412 F.3d 1056, 1064 (9th Cir. 1005). Engaging in the unauthorized practice of law has routinely been held to be a "fraudulent, unfair, or deceptive" act under the statute. *See, e.g., In re Monson*, 522 B.R. 340, 355 (Bankr. D. Utah 2014) ("Offering legal advice to debtors can constitute a fraudulent, unfair or deceptive act within the context of § 110(i)(1).") (collecting cases); *In re Bagley*, 433 B.R. 325, 334 (Bankr. D. Mont. 2010). Given that Lopez provided Debtor with a business card advertising his association with the Paralegal Group and listing a variety of legal topics, the Court concludes that Lopez has engaged in a "fraudulent, unfair, or deceptive" act," and, therefore, the \$2,000 damages requested are appropriate.

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TENTATIVE RULING

The Court is inclined to GRANT the motion and order Lopez to pay Debtor \$2,200 and pay a fine to the United States Trustee in the amount of \$1,000.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Mayra Huerta

Pro Se

Movant(s):

United States Trustee (RS)

Represented By
Mohammad Tehrani

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:17-13483 Ricardo Enciso and Sonia Gamez

Chapter 7

#11.00 Trustee's Motion Objecting to Debtors' Claimed Exemptions

Also #12

EH__

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricardo Enciso

Represented By
Speros P Maniates

Joint Debtor(s):

Sonia Gamez

Represented By
Speros P Maniates

Movant(s):

Larry D Simons (TR)

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

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6:17-13483 Ricardo Enciso and Sonia Gamez

Chapter 7

#12.00 Motion to Extend Deadline for Chapter 7 Trustee to file a Complaint to Deny Debtors' Discharge

Also #11

EH__

Docket 23

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricardo Enciso

Represented By
Speros P Maniates

Joint Debtor(s):

Sonia Gamez

Represented By
Speros P Maniates

Movant(s):

Larry D Simons (TR)

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

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6:16-17911 Elizabeth T Baker

Chapter 7

#13.00 Motion to Convert Case From Chapter 7 to Chapter 13

EH__

Docket 92

Tentative Ruling:

8/23/17

BACKGROUND

Debtor obtained a discharge in a Chapter 7 case filed on November 30, 2010. Between February 14, 2013 and September 18, 2015, Debtor filed four Chapter 13 cases, all of which were dismissed within one year.

On August 5, 2016, Elizabeth Baker ("Debtor") filed a Chapter 13 voluntary petition. On October 26, 2016, Debtor's Chapter 13 plan was confirmed. On June 9, 2017, unaware that she was ineligible for a Chapter 7 discharge, Debtor converted her case to Chapter 7. On July 24, 2017, Debtor filed a motion to reconvert to Chapter 13.

DISCUSSION

11 U.S.C. § 706(a) states: "The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title." Here, Debtor's case was previously converted under § 1307.

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"Courts are divided as to whether the debtor can re-convert a case that has been previously converted." Ginsberg & Martin on Bankruptcy § 12.13[A] (5th ed. 2017-2); see also *In re Masterson*, 141 B.R. 84, 87 (Bankr. E.D. Pa. 1992) ("The courts appear to be evenly divided on the issue of whether a 'second conversion' of a case previously converted to Chapter 7 is ever permissible.") (collecting cases). The courts that have determined that § 706(a) bars subsequent reconversion have primarily relied upon the plain language of the statute, but have also considered the legislative history. See *In re Banks*, 252 B.R. 399, 400 (Bankr. E.D. Mich. 2000). One court has stated the following:

Unfortunately, for the debtor, the language of Section 706 clearly bars a debtor from converting a case from Chapter 7 to Chapter 13 more than once. Subsection (a) of that section states in relevant part that a "debtor may convert a case under this chapter to a case under Chapter 11 or 13 of this title at any time, if the case has not been converted under Section 1112 or 1307 of this title. The language of this statute is not discretionary. By its plain meaning it bars the debtor from this second attempt at conversion. Moreover, there is no case law supporting a discretionary right. At least one other bankruptcy court has arrived at this conclusion, *In re Bumpass*, 28 B.R. 597 (Bankr. S.D.N.Y. 1983), and this Court shares that view.

In re Nimai Kumar Ghosh, 38 B.R. 600, 603 (Bankr. E.D.N.Y. 1984) (footnote omitted).

As the court implicitly concluded in *Nimai Kumar Ghosh*, the phrase appears "if the case has not been converted" appears to modify the entirety of the first clause, not simple the language "at any time." The phrase "at any time" is not set off from the remainder of the clause in any fashion. Therefore, §706(a) is only applicable if the case has not been converted previously. The remaining question is, if § 706(a) is inapplicable, can the Debtor resort to any other mechanism in order to convert her case?

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Chapter 7

Courts that have permitted a reconversion appear to fall into two categories. First, some courts appear to believe that, when § 706(a) is inapplicable, the default position is that the Court has discretion to allow conversion based on policy grounds. *See, e.g., In re Masterson*, 141 B.R. at 88. Other courts have turned to § 706(c). *See, e.g., Matter of Johnson*, 116 B.R. 224, 225 (Bankr. Idaho 1990); *In re Sensibaugh*, 9 B.R. 45, 46 (Bankr. E.D. Va. 1981). Section 706(c) states: "[t]he court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests or consents to such conversion." While the plain language of § 706(c) indicates that it operates as a restraint on the court's authority, not as a source of authority, courts that have utilized this provision appear to conclude that if the debtor consents to or requests conversion, the court has discretion to permit such conversion.

A third possibility is that a debtor could seek voluntary dismissal or conversion under § 707, consent to conversion, and allow the Court to determine whether dismissal or conversion was more appropriate in the circumstances. This approach would have the disadvantage of possibly resulting in dismissal of the case, but it would seem to solve the statutory interpretation issues encountered by the alternative approaches.

Nevertheless, the Court need not determine whether reconversion is permitted under § 706(a) because, if the Court were to conclude that reconversion is discretionary, Debtor has not demonstrated that the exercise of such discretion would be appropriate. Debtor has had four Chapter 13 cases dismissed in the previous five years. More importantly, at the time Debtor converted to Chapter 7, there was an outstanding motion to dismiss pending for failure to make plan payments. Debtor appears to have chosen to convert the case to Chapter 7 rather than resolve the Chapter 13 Trustee's pending motion to dismiss.

Given Debtor's history in bankruptcy, the absence of any legal argument in Debtor's motion, and the absence of any evidence suggesting a change in circumstances which would allow Debtor to be successful in a Chapter 13 proceeding, the reconversion of the case, even if the Court were to conclude that such reconversion was legally permissible, would be inappropriate.

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CONT... Elizabeth T Baker

Chapter 7

TENTATIVE RULING

The Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Elizabeth T Baker

Represented By
Nancy Korompis

Movant(s):

Elizabeth T Baker

Represented By
Nancy Korompis

Trustee(s):

John P Pringle (TR)

Pro Se

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11:00 AM

6:16-13091 Luz Ampelia Castro

Chapter 7

#14.00 Motion to Approve Compromise of Controversy

EH__

Docket 36

Tentative Ruling:

8/23/17

BACKGROUND

On April 6, 2016, Luz Castro ("Debtor") filed a Chapter 7 voluntary petition. On January 9, 2017, Trustee filed an adversary proceeding against Enrique Castro ("Defendant") for: (1) avoidance of fraudulent transfer; and (2) recovery of avoided transfer. The subject of the adversary proceeding was certain real property located at 2035 Caseros Drive, San Jacinto, California 92592 (the "Property").

According to Trustee, Defendant acquired the Property shortly before the marriage of Defendant and Debtor. During the marriage, however, community property income was used to make mortgage payments, causing the community estate to acquire an interest in the Property. On March 31, 2015, Debtor transferred her interest in the property to Defendant. Trustee asserts that Debtor did not receive reasonably equivalent value for the transfer.

On July 6, 2017, Trustee filed a motion to approve compromise pursuant to Fed. R. Bankr. P. Rule 9019. Trustee proposes to settle the adversary proceeding for \$10,000. On July 28, 2017, the matter was set for hearing.

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CONT... Luz Ampelia Castro

Chapter 7

DISCUSSION

Fed. R. Bankr. P. Rule 9019 provides that:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

The Ninth Circuit Court of Appeals have previously outlined the factors to be considered in approving a compromise pursuant to Rule 9019: (1) the probability of success in the litigation; (2) the difficulties to be encountered in the matter of collection; (3) the complexity, expense, inconvenience and delay of litigation; and (4) the interest of creditors with deference to their reasonable. *See In re A&C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The listed factors assist the Court in determining "the fairness, reasonableness and adequacy of a proposed settlement agreement." *Id.*

Trustee's compromise motion does not provide the information the Court requires to apply the *A&C Properties* factors or to assess the reasonableness of the settlement. First and foremost, the motion fails to identify the value of the Property or the value of the community estate's interest in the property, rendering it impossible to determining the reasonableness of the settlement amount. Additionally, the motion addresses the *A&C Properties* factors in cursory, boiler-plate language. Regarding factor (1), the motion simply states that success in the adversary is not guaranteed. Regarding factor (2), the motion states that Trustee would have to sell the Property if the adversary proceeding were successful. Regarding factor (3), the motion states that the adversary is "not overly complex" but additional fees would result. Regarding factor (4), the motion states that the settlement would provide funds for creditors.

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In the absence of any evidence regarding the value of the Property or the value of the community estate's interest in the Property, the Court cannot approve the compromise when only general arguments have made in its support.

TENTATIVE RULING

The Court is inclined to DENY the motion or CONTINUE for supplemental pleading to allow the Court to evaluate the reasonableness of the proposed settlement amount.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Luz Ampelia Castro

Represented By
George P Hobson Jr

Movant(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy
Carmela Pagay

Trustee(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy
Carmela Pagay

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6:14-13131 Erma Fay Dorn

Chapter 7

#15.00 Chapter 7 Trustee's Motion for Order Directing the Debtor's State Court Counsel to Turn Over Property of the Estate Pursuant to Bankruptcy Code Section 542 (a)

EH__

Docket 134

Tentative Ruling:

8/23/17

BACKGROUND

On March 13, 2014, Erma Dorn ("Debtor") filed a Chapter 7 voluntary petition. Prior to the filing of the petition, Debtor was involved in state court litigation in Riverside. Debtor retained the Southwick Law Firm ("Southwick") to assist in the state court litigation, and, according to Trustee, at the time of the filing of the petition, Southwick held \$10,000 in a client trust account.

After more than a year of attempting to reach a resolution with Southwick, Trustee filed a motion for order directing Southwick to turn over property of the estate pursuant to 11 U.S.C. § 542 on July 24, 2017. On August 9, 2017, Southwick filed its opposition. Southwick makes three arguments in opposition: (1) Trustee is required to bring an adversary proceeding; (2) Southwick has earned the funds in the client trust account and the funds are no longer property of the estate; and (3) the motion should be denied on the basis of laches and estoppel.

DISCUSSION

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Chapter 7

11 U.S.C. § 542(a) states:

Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

Procedurally, Southwick argues that an adversary proceeding is required to secure turnover of property. Fed. R. Bankr. P. Rule 7001(1) states that an adversary proceeding is required for "a proceeding to recover money or property other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002." Courts have held that Rule 7001(1) mandates that an adversary proceeding be commenced when a trustee seeks § 542 turnover from a party other than the debtor. For example, the Seventh Circuit Court of Appeals has previously stated:

A turnover action is an adversary proceeding which must be commenced by a properly filed and served complaint. The Roukas, however, entered the matter by filing a motion. A turnover proceeding commenced by motion rather than by complaint will be dismissed; and a turnover order entered in an action commenced by motion will be vacated.

Matter of Perkins, 902 F.2d 1254, 1258 (7th Cir. 1990); *see also In re Wheeler Tech., Inc.*, 139 B.R. 235, 239 (B.A.P. 9th Cir. 1992) ("Bankruptcy Rule 7001 explicitly states that an action to recover money or property is an adversary proceeding, subject to the procedural rules therein.").

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CONT... Erma Fay Dorn

Chapter 7

Here, because Trustee is attempting to secure turnover of estate property from a party other than Debtor, Fed. R. Bankr. P. Rule 7001(1) requires the commencement of an adversary proceeding. Southwick has not waived the procedural requirement, and, therefore, the Court must dismiss Trustee's motion.

TENTATIVE RULING

The Court is inclined to DISMISS the motion.

APPEARANCES REQUIRED, although Trustee may decline to appear and would be deemed to submit to the tentative.

Party Information

Debtor(s):

Erma Fay Dorn

Represented By
Patricia M Ashcraft

Movant(s):

Arturo Cisneros (TR)

Represented By
William Malcolm
Kiana Khajeh
Dane W Exnowski
Katelyn R Knapp

Trustee(s):

Arturo Cisneros (TR)

Represented By
William Malcolm
Kiana Khajeh
Dane W Exnowski
Katelyn R Knapp

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6:12-26770 Heinrich Franz Brinkmann and Ina Anneliese Brinkmann

Chapter 7

#16.00 Trustee's Final Report and Applications for Compensation

EH__

Docket 247

Tentative Ruling:

8/23/2017

No opposition has been filed.

Service was Proper.

The applications for compensation of the Trustee, Counsel for the Trustee, and Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 5,635.20

Trustee Expenses: \$ 611.75

Attorney Fees: \$ 8,395.89

Attorney Costs: \$ 363.02

Accountant Fees: \$ 1,167.89

Accountant Costs: \$ 260.03

Court Costs: \$350.00

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Heinrich Franz Brinkmann

Represented By

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CONT... Heinrich Franz Brinkmann and Ina Anneliese Brinkmann
Stephen H Darrow

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Joint Debtor(s):

Ina Anneliese Brinkmann

Represented By
Stephen H Darrow

Trustee(s):

John P Pringle (TR)

Represented By
Toan B Chung

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6:13-27610 Baleine LP

Chapter 7

#17.00 Motion to Sell Property of the Estate Free and Clear of Liens under Section 363 (f) (1) Authorizing Sale of Estate's Right, Title and Interest in Real Property Free and Clear of Liens of US Bank as Custodian for PFS Financial I, LLC, Cheswold (TL), LLC, BMO Harris Bank, N.A., Propel Financial 1, LLC, and the City of Rochester; (2) Approving Overbid Procedure; and (3) Approving Payment of Commissions; Declarations in Support.

EH__

Docket 440

Tentative Ruling:

8/23/17

BACKGROUND

On October 24, 2013, Baleine, LP ("Debtor") filed a Chapter 7 voluntary petition. On Schedule A, Debtor listed certain real property located at 40 Ferndale Crescent, Rochester, New York 14609 (the "Property"). On October 25, 2016, the Court authorized the employment of Nathan Genovese and Hunt Real Estate-ERA (collectively, "Broker") as real estate broker.

On August 2, 2017, Trustee filed a motion for an order: (1) authorizing the sale of estate's right, title and interest in real property free and clear of liens of U.S. Bank as custodian for PFS Financial I, LLC, Cheswold (TL), LLC, BMO Harris Bank, N.A., Propel Financial 1, LLC, and the City of Rochester; (2) approving overbid procedure; and (3) approving payment of commissions. Trustee proposes to sell the property for \$25,000 to the current lessee, Antonio Santiago. There are four tax liens (collectively, "Tax Liens") on the property, two recorded lis pendens (collectively, "Lis Pendens"), and various property taxes and utility obligations outstanding. The proposed distribution of proceeds is \$6,262 for taxes and utility charges, and \$2,000 in closing

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costs, with the remainder to be received by the estate.

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DISCUSSION

I. Sale of Estate Property

11 U.S.C. § 363(b)(1) allows a trustee to sell property of the estate outside of the ordinary course, after notice and a hearing. A sale pursuant to § 363(b) requires a demonstration that the sale has a valid business justification. *In re 240 North Brand Partners, Ltd.*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996). "In approving any sale outside the ordinary course of business, the court must not only articulate a sufficient business reason for the sale, it must further find it is in the best interest of the estate, i.e. it is fair and reasonable, that it has been given adequate marketing, that it has been negotiated and proposed in good faith, that the purchaser is proceeding in good faith, and that it is an "arms-length" transaction." *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal.).

Trustee asserts that the sale price represents the fair market value of the property and the estate will receive approximately \$16,738 and, therefore, sound business reasons exist for the sale. Because the sale will generate proceeds for distribution to unsecured creditors, the Court finds that Trustee has met his burden of demonstrating a valid business justification.

II. Sale Free & Clear of Liens

11 U.S.C. § 363(f) (2010) states:

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(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if-

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Trustee contends that the Tax Liens and Lis Pendens were recorded post-petition, in violation of the automatic stay, and, therefore, are in bona fide dispute. 11 U.S.C. § 362(d)(4) stays "any act to create, perfect, or enforce any lien against property of the estate." 11 U.S.C. § 362(b)(18) contains one of the exceptions to the automatic stay:

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay –

- (18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition.

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The Seventh Circuit has previously explained the purpose of the § 362(b)(18) exception:

The exception's intent was to reverse decisions that had held that the automatic stay blocked local governments from attaching statutory liens for property taxes that accrued subsequent to a bankruptcy filing. Because local governments rely on such taxes as one of their principal sources of revenue usually secured via statutory liens, certain court decisions created a windfall for secured lenders, who otherwise be subordinated to such tax liens, and significantly impaired revenue collection. Congress intended this section to overrule such cases and allow local municipalities to use their property tax liens to secure payment of property taxes.

Here, the evidence before the Court is not conclusive regarding the applicability of the § 362(b)(18) exception. The tax lien certificate relating to the lien sold to US Bank as custodian for FFS Financial 1, is illustrative of the lack of clarity. The certificate states that the rights being sold arise from "an unpaid tax, special ad valorem levy, special assessment or other charge imposed upon certain real property."

"The trustee has the burden of establishing the existence of a bona fide dispute." *In re Terrace Chalet Apartments, Ltd.*, 159 B.R. 821, 828 (N.D. Ill. 1993). "[C]ourts must determine 'whether there is an objective basis for either a factual or legal dispute as to the validity of the debt.'" *In re Gaylord Grain L.L.C.*, 306 B.R. 624, 627 (B.A.P. 8th Cir. 2004) (quoting *In re Busick*, 831 F.2d 745, 750 (7th Cir. 1987)). "Courts utilizing this definition have held the parties to an evidentiary standard and evidence must be provided to show factual grounds that there is an objective basis for the dispute." *Id.* Here, while Trustee has provided evidence to suggest that it is plausible the tax lien were recorded in violation of the automatic stay, that same evidence suggests that it is plausible the tax liens fit within the exception to the automatic stay outlined above. The uncertainty arises not from a factual dispute, but from the absence of any evidence regarding the specific character of the lien. Because it not the evidence that creates the ambiguity, but the lack thereof, the Court concludes that a bona fide dispute has not been established.

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Trustee advances an alternative argument under § 362(f): that the purchase price of the property exceeds the aggregate value of all liens on the property, satisfying § 363(f)(3). Here, Trustee has provided evidence that establishes that the purchase price of the Property is \$25,000, and that the aggregate value of the liens on the property is less than \$25,000. Therefore, § 363(f)(3) has been satisfied, and the sale shall be free and clear of liens with such liens to attach to sale proceeds to the same extent, validity and priority as such liens attached to the property prior to the sale.

III. *Overbid Procedures & Brokers Commission*

The Court has reviewed the proposed overbid procedures finds the procedures to be reasonable. *See, e.g., In re Fridman*, 2016 WL 3961303 at *8 (B.A.P. 9th Cir. 2016) (reviewing overbid procedures for reasonableness). The Court has also reviewed the proposed real estate brokers' commission and finds it to be reasonable.

IV. *14-Day Stay*

Fed. R. Bankr. P. Rule 6004(h) states: "An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Court deems the absence of objections to be consent to the relief requested, pursuant to Local Rule 9013-(1)(h), and, therefore, will waive the stay of Rule 6004(h).

TENTATIVE RULING

The Court is inclined to GRANT the motion in its entirety.

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APPEARANCES REQUIRED.

Party Information

Debtor(s):

Baleine LP

Represented By
Summer M Shaw

Movant(s):

Larry D Simons (TR)

Represented By
Carmela Pagay
Todd A Frealy

Trustee(s):

Larry D Simons (TR)

Represented By
Carmela Pagay
Todd A Frealy

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6:13-30133 Nabeel Slaieh

Chapter 7

#18.00 Motion by Debtor Nabeel Slaieh for Sanctions against Brian C. Ostler Sr. and the Law Offices of Brian C. Ostler for Willfull Violation of the the Automatic Stay

EH__

Docket 472

Tentative Ruling:

Debtor's motion indicates that Brian Ostler was to be served by the Court via Notice of Electronic Filing. Brian Ostler, is not, however, on the Electronic Mail Notice List to receive NEF transmission. Therefore, the Court is inclined to CONTINUE the matter to September 20, 2017, at 11:00 a.m. for proper service on Brian Ostler and his law office. Movant to serve the motion and notice of hearing on Mr. Ostler and his law firm.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Movant(s):

Nabeel Slaieh

Represented By
George A Saba
George A Saba

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

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6:16-21223 Kelly Arnold

Chapter 7

Adv#: 6:17-01019 Frealy v. Arnold et al

#19.00 CONT Status Conference RE: Complaint by Todd Frealy against Larry Arnold, Kelly Arnold. (Charge To Estate - \$350.00). Nature of Suit: 14 - Recovery of money/property - other, 11 - Recovery of money/property - 542 turnover of property

From: 4/5/17, 7/19/17, 7/26/17

EH__

Docket 1

*** VACATED *** REASON: ADVERSARY DISMISSED 8/14/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kelly Arnold

Represented By
Todd L Turoci

Defendant(s):

Kelly Arnold

Pro Se

Larry Arnold

Pro Se

Plaintiff(s):

Todd Frealy

Represented By
Carmela Pagay

Trustee(s):

Todd A. Frealy (TR)

Represented By
Carmela Pagay

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6:16-14050 Ricardo Horacio Quintero

Chapter 7

Adv#: 6:17-01039 United States Trustee for the Central District of v. Quintero et al

#20.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01039. Complaint by United States Trustee for the Central District of California, Region 16 against Ricardo Horacio Quintero, Araceli Cantu. (Fee Not Required). with adversary cover sheet Nature of Suit: (41 - Objection / revocation of discharge - 727(c),(d), (e)

From: 4/26/17, 6/28/17

EH__

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED 8/16/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricardo Horacio Quintero

Represented By
Christopher J Langley

Defendant(s):

Araceli Cantu

Pro Se

Ricardo Horacio Quintero

Pro Se

Joint Debtor(s):

Araceli Cantu

Represented By
Christopher J Langley

Plaintiff(s):

United States Trustee for the Central

Represented By
Everett L Green

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CONT... Ricardo Horacio Quintero

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Trustee(s):

Howard B Grobstein (TR)

Pro Se

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6:15-14230 Home Security Stores, Inc.

Chapter 7

Adv#: 6:17-01085 PRINGLE v. Winn et al

#21.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01085. Complaint by JOHN P PRINGLE against Ralph Winn. (Charge To Estate - \$350.00). and other Defendants including DOES 1-25 Nature of Suit: 12 - Recovery of money/property - 547 preference, 13-Recovery of money/property - 548 fraudulent transfer, 21-Validity, priority or extent of lien or other interest in property, 14 - Recovery of money/property - other, 91- Declaratory judgment)

From: 7/12/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Home Security Stores, Inc.

Represented By
Winfield S Payne III

Defendant(s):

Steven B Knoch

Represented By
Seth W Wiener

Stacy Winn

Pro Se

Natalia V Knoch

Represented By
Seth W Wiener

Ralph Winn

Pro Se

Sterling Security Service, Inc.

Represented By
Seth W Wiener

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CONT... Home Security Stores, Inc.

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Plaintiff(s):

JOHN P PRINGLE

Represented By
Charity J Miller

Trustee(s):

John P Pringle (TR)

Represented By
Robert P Goe
Charity J Miller

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6:14-16813 M. A. Tabor

Chapter 7

Adv#: 6:16-01128 Frealy v. Trotochau et al

#22.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01128. Complaint by Todd A. Frealy against Robin Sherrie Trotochau, Pacific Mortgage Exchange, Inc.. (Charge To Estate). - Complaint: (1) For Breach Of Contract; (2) For Common Counts; (3) To Avoid And Recover Fraudulent Transfers; And (4) To Preserve Recovered Transfers For Benefit Of Debtor's Estate (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

From: 7/20/16, 9/28/16, 1/11/17, 3/8/17, 6/7/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

M. A. Tabor

Represented By
Judith Runyon

Defendant(s):

Pacific Mortgage Exchange, Inc.

Represented By
Salvatore Bommarito

Robin Sherrie Trotochau

Pro Se

Plaintiff(s):

Todd A. Frealy

Represented By
Anthony A Friedman

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CONT... M. A. Tabor

Chapter 7

Trustee(s):

Todd A. Frealy (TR)

Represented By
Anthony A Friedman
Lindsey L Smith

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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01163 Revere Financial Corporation v. Burns

#23.00 CONT Motion to Dismiss Adversary Proceeding re First Amended Complaint

From: 8/2/17

Also #24 & #25

EH__

Docket 36

Tentative Ruling:

8/23/17

BACKGROUND

On June 23, 2016, Revere Financial Corporation ("Revere") filed a complaint against Don Burns ("Burns"), and, on June 30, 2016, the complaint was amended. After Burns failed to answer or otherwise respond to the complaint, the clerk entered default against Burns on November 16, 2016.

On April 21, 2017, Revere filed a motion for default judgment. On May 4, 2017, Burns filed a motion to set aside default and an answer. On May 24, 2017, Revere filed its opposition to the motion to set aside default. At a hearing on June 7, 2017, the Court instructed the parties that it would conditionally grant the motion to set aside default upon payment of reasonable costs, and requested further briefing regarding Revere's costs incurred as a result of Burns's delay. At a continued hearing on July 12, 2017, after the Court posted a tentative ruling reducing the fees requested by Revere, the Court continued the motion to set aside default to allow further briefing from parties. The fee dispute has not yet been resolve and no order has been entered

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related to the motion to set aside default.

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On June 30, 2017, Burns filed a motion to dismiss. On August 9, 2017, Revere filed their opposition to the motion to dismiss.

DISCUSSION

Despite the fact that Burns is still in default, neither party has briefed the impact of that status on Burns's motion to dismiss. A legal scholar previous wrote that "the defaulting party loses his standing to contest the truth of all facts that are 'well-pleaded' in the non-defaulting party's complaint." Peter H. Bresnan & James P. Cornelio, *Relief from Default Judgments Under Rule 60(b) – A Study of Federal Case Law*, 49 Fordham L. Rev. 956, 959-60 (1981) (collecting cases); *see also Thomson v. Wooster*, 114 U.S. 104, 112-14 (1885) ("From the authorities cited, and the express language of our own rules in equity, it seems clear that the defendants, after the entry of the decree *pro confesso*, and while it stood unrevoked, were absolutely barred and precluded from alleging anything in derogation of, or in opposition to, the said decree, and that they are equally barred, and precluded from questioning its correctness here on appeal, unless on the face of the bill it appears manifest that it was erroneous and improperly granted."). Burns's motion to dismiss raises a legal argument, however, not a factual argument.

Courts appear willing to simultaneously grant motions to set aside default and dismiss the case. *See, e.g., Mineo Yoshida v. Daikokuya Co., Ltd.*, 2008 WL 11338257 (C.D. Cal. 2007). Other courts have been more specific with regard to the order in which the motion to set aside default and the motion to dismiss must be considered. *See Everest Indem. Ins. Co. v. Demarco*, 2013 WL 12136578 at *2 (C.D. Cal. 2013) ("Before the Court can consider their motion to dismiss, the default must be set aside pursuant to Fed. R. Civ. P. Rule 55(c)."). Where, as is the case here, the Court has merely orally indicated that it will set aside default upon the occurrence of a condition which has not yet been defined, and may or may not come to pass, the Court considers it improper to rule on the motion to dismiss. Therefore, the Court will continue the matter for Burns to obtain a setting aside of the default.

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TENTATIVE RULING

The Court is inclined to CONTINUE the matter for fee payment, if any, to be made, and an order to be entered setting aside the default.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Don Cameron Burns

Represented By
Don C Burns

Movant(s):

Don Cameron Burns

Represented By
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

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Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:13-27611 Douglas Jay Roger

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Adv#: 6:16-01163 Revere Financial Corporation v. Burns

**#24.00 CONT Motion to set aside RE: Default
HOLDING DATE**

From: 6/7/17, 7/12/17

Also #23 & #25

EH__

Docket 21

Tentative Ruling:

8/23/2017

Background

At a hearing on the Defendant's motion to set aside default ("Motion"), the Court indicated it would grant the motion conditioned upon the Defendant paying Plaintiff's fees incurred for opposing the Motion and for preparation of the Motion for Default Judgment that would become moot as a result of the order setting aside the default, subject to any objection from Defendant as to the reasonableness of the fees.

The Court required that a declaration from Plaintiff regarding fees would be due by June 28, 2017, and that any response or objection to the fees would be due by July 7, 2017. On June 28, 2017, Plaintiff filed a declaration regarding fees, and, on July 7, 2017, Defendant filed its objection. At the hearing on July 12, 2017, the Court continued the matter to August 23, 2017, to allow for supplemental briefing to be filed by Plaintiff and Defendant. On July 26, 2017, Plaintiff filed a supplemental declaration in support of its requested fees. On August 9, 2017, Defendant filed a

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supplemental objection.

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Summary of Fees

Since the last hearing, and in light of supplemental briefing on the issue, the Court has supplemented its review of the billing records provided by Plaintiff and finds several entries to be unreasonably high. Specifically,

1. The duplicative and excessive entries for research regarding elements, etc. of default judgments constitute two separate entries of approximately 7 hours each. The total for these two entries is thus approximately 14 hours regarding research for a default judgment motion on April 13 and April 14. The Court finds these research amounts unreasonably high. ($\$1,762.50 + \$1,675 = \$3,437.50$)
2. A related conference between the associate preparing the motion and the partner on the case, Mr. Franklin Fraley, for a total of nearly 5 hours on April 19 appears excessive. ($\$1,237.50$)
3. The April 21 revisions and conference with Mr. Fraley for a total of 5.2 hours inappropriately lumps amounts for distinct tasks together and warrants striking as well. ($\$1,300$)
4. The May 9 and 10 entries to review/analyze for preparation of the opposition to the Defendant's Motion are duplicative and should be stricken. ($\$1,250 + \$1,125 = \$2,375$)
5. The May 24 entries that total 7.75 hours improperly lump tasks making it difficult to gauge the reasonableness of the fees. Overall the Court finds that the amount billed for the tasks set forth appear unreasonably high. This entry shall be stricken. ($\$1,937.50$)
6. The entry of October 20, 2016, that totals .8 hours including lumping of multiple tasks and appears excessive. Given that the other entry that date implies that the conference was for .05 hours, the Court interprets the other task, researching the procedure for entering a default, to be for the remaining 0.75 hours. Given that the procedure is relatively straightforward, and there are multiple other entries for the same task, the entry appears unreasonable and

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will be stricken. (\$180).

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7. The entry of November 3, 2016, for 2 hours improperly lumps several tasks making it difficult to gauge the reasonableness of the fees. Furthermore, the entry appears vague and duplicative of other entries. This entry shall be stricken (\$450)
8. The entry of May 11, 2017, for 2.5 hours improperly lumps several tasks making it difficult to gauge the reasonableness of the fees. This entry shall be stricken (\$625)
9. The entry of May 12, 2017, for 4.25 hours appears unreasonable excessive. Plaintiff's opposition memorandum [Dkt No. 26] was relatively straightforward, and, therefore, this entry will be stricken. (\$1,062.50).
10. The entry of May 23, 2017, for 2.45 hours contains impermissible lumping of several tasks, is duplicative of the previous entries, and appears excessive. This entry shall be stricken (\$612.50)
11. The entry of June 2, 2017, for 1.1 hours appears unreasonable excessive. Specifically, the reply of Defendant [Dkt. 30] was less than four pages long and contained no legal argument or legal citations. This entry shall be stricken (\$275)
12. The entry of June 28, 2017, for 1.75 hours was outside the scope of the Court's order allowing reasonable costs for bringing the motion for default judgment and opposing the motion to set aside default. This entry shall be stricken (\$875)

Striking the above amounts, the Court finds that a reduction of \$14,367.50 is appropriate.

Based on the foregoing, the Court is inclined to find the remaining figure of \$4,593.75 to be a reasonable amount of fees for the actions taken by Plaintiff in opposing the Motion and in drafting the Motion for Default Judgment.

Plaintiff's Legal Argument & Discussion

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Plaintiff's supplemental declaration argues, in part, that the Court: (1) lacks the authority to review Plaintiff's fee award altogether; and (2) improperly reduced Plaintiff's fee award. The Court will briefly address Plaintiff's arguments.

In support of its argument that the Court lacks the authority to reduce attorney fees *sua sponte*, Plaintiff cites *U.S. v. Eleven Vehicles*, 200 F.3d 203, 211 (3rd Cir. 2000), and two non-bankruptcy cases in this district. This situation is wholly distinguishable from the *Eleven Vehicles* case. First, in the *Eleven Vehicles* case, the party requesting fees made the request on the basis of a fee-shifting statute that stated, in part, that "a court shall award." *See id.*; 28 U.S.C. § 2412(d)(1)(A). In contrast, there is no statute in the present case directing the Court to award Plaintiff fees, rather the Court has found it equitable to provide Plaintiff some reimbursement for the costs incurred.

Additionally, the bankruptcy statute dealing with compensation, 11 U.S.C. § 330, clearly instructs the Court to consider "all relevant factors" when determining "reasonable compensation" and prohibits the Court from awarding compensation in certain circumstances. 11 U.S.C. § 330 (3)-(4). Plaintiff's argument that the Court cannot award fees conflicts with the statutory directive that the Court is to consider the reasonableness of fees. And the Court is to undertake this review even when no party has objected, because it is well established that it is the applicant's burden to demonstrate the reasonableness of the fees. *See, e.g., In re Fibermark, Inc.*, 349 B.R. 385, 395 (Bankr. D. Vt. 2006); *see also* 3 Collier on Bankruptcy ¶ 330.03[2] (16th ed. 2015) ("Once services are determined to be compensable, the applicant must demonstrate that his work was necessary and reasonable.").

Furthermore, Plaintiff is requesting fees not according to a statutory fee shifting provision or 11 U.S.C. § 330, but only upon the tentative conditions imposed by the Court. Plaintiff's argument that the Court cannot review the fees amounts to an argument that the Court lacks the authority to interpret its own instructions, and such an argument lacks merit.

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Plaintiff also offers a variety of arguments as to why each of the reductions noted in the Court's previous tentative ruling was mistaken. Plaintiff offers three arguments as to why the various reductions were inappropriate: (1) that the Court misunderstood the entries; (2) that block-billing is not a reason to reduce or strike a fee entry; and (3) that excessive or duplicative fees should not be stricken in their entirety. The Court will briefly address Plaintiff's arguments.

The Court will address the first two arguments in conjunction. Regarding (1), the Court did not misunderstand Plaintiff's billing entries, but, rather, because of the extent of lumping in Plaintiff's time entries, the Court chose to identify the entries in its tentative ruling by reference to the first task listed in the entry. Regarding (2), Plaintiff argues that block-billing refers to entries that document the total daily time working on a case and (a) that Plaintiff did not block bill; but (b) that block billing is not a reason to strike fees nevertheless. While the Court agrees that block billing, or lumping, should not invariably result in a fee reduction or elimination, the Court notes that, in bankruptcy, a fee applicant has the burden of demonstrating that its requested fees are reasonable. Given that lumping may prevent a Court from being able to ascertain the reasonableness of the fees requested, lumping may be cause for reduction or elimination of fees in bankruptcy. *See, e.g., In re Thomas*, 2009 WL 7751299 at *5 (B.A.P. 9th Cir. 2009) ("Lumping services in a single billing entry in a fee application is universally disapproved by bankruptcy courts.") (quotation omitted); *In re Baker*, 374 B.R. 489, 494 (Bankr. E.D.N.Y. 2007) ("Also the billing of practice of aggregating multiple tasks into one billing entry, typically referred to as 'block billing,' is routinely disallowed. This is because the practice of block billing makes it exceedingly difficult for a Court to determine the reasonableness of the time spent on each of the individual services or tasks provided. Consequently, courts will summarily disallow time for discrete legal services merged together in a fee application.").

Plaintiff also argues that the elimination of fee entries that the Court concluded were duplicative or excessive was incorrect. Once again, Plaintiff cites a non-bankruptcy case that dealt with a mandatory fee-shifting statute. In bankruptcy, the Court is clearly directed by statute to disallow duplicative time entries under 11 U.S.C. § 330(a)(4)(a)(i) and to review the reasonableness of the requested fees under 11 U.S.C. § 330(a)(3). Therefore, this argument lacks merit.

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CONT... Douglas Jay Roger

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Ultimately, Plaintiff's rigorous defense of its requested fees fails as a matter of law because of the following: (1) there is no mandatory fee-shifting statute; (2) the Bankruptcy Code directs the Court to review the reasonableness of fees; and (3) Plaintiff is requesting fees pursuant to the discretionary condition of the Court. This final point merits brief elaboration. In reviewing the Motion, the Court thought it equitable to condition the setting aside of default on the reimbursement by Defendant of reasonable costs incurred as a result of Defendant's delay. Instead of simply selecting a figure that the Court thought was fair, the Court made the decision to allow the parties to submit evidence and brief the issue of the appropriate payment. The Court could have decided to simply grant the motion or choose a figure itself. There is no mandatory fee-shifting statute and the Plaintiff has no entitlement to any fees.

In light of the highly adversarial nature of the briefing surrounding this fee dispute, and in consideration of the evidence and arguments of both parties, the Court elects to modify its previous instructions and will, instead, condition the setting aside of Defendant's default on Defendant's payment of \$5,000 to Plaintiff. The Court believes that this number represents equitable and just compensation given Defendant's delay in seeking to set aside default.

APPEARANCES REQUIRED.

07/12/2017

At the prior hearing on the Defendant's motion to set aside default ("Motion"), the Court indicated it would grant the motion conditioned upon the Defendant paying Plaintiff's fees incurred for opposing the Motion and for preparation of the Motion for Default Judgment that would become moot as a result of the order setting aside the default, subject to any objection from Defendant as to the reasonableness of the fees.

The Court required that a declaration from Plaintiff re: fees would be due by June 28, 2017, and that any response/objection to the fees would be due by July 7, 2017. The Declaration re: Fees and Objection were timely filed.

The Court has reviewed the billing records provided by Plaintiff and finds several entries to be unreasonably high. Specifically,

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13. The duplicative and excessive entries for research regarding elements, etc. of default judgments constitute two separate entries of approximately 7 hours each. The total for these two entries is thus approximately 14 hours regarding research for a default judgment motion on April 13 and April 14. The Court finds these research amounts unreasonably high. ($\$1,762.50 + \$1,675 = \$3,437.50$)
14. A related conference between the associate preparing the motion and the partner on the case, Mr. Franklin Fraley, for a total of nearly 5 hours on April 19 appears excessive. ($\$1,237.50$)
15. The April 21 revisions and conference with Mr. Fraley for a total of 5.2 hours inappropriately lumps amounts for distinct tasks together and warrants striking as well. ($\$1,300$)
16. The May 9 and 10 entries to review/analyze for preparation of the opposition to the Defendant's Motion are duplicative and should be stricken. ($\$1,250 + \$1,125 = \$2,375$)
17. The May 24 entries that total 7.75 hours improperly lump tasks making it difficult to gauge the reasonableness of the fees. Overall the Court finds that the amount billed for the tasks set forth appear unreasonably high. This entry shall be stricken. ($\$1,937.50$)

Striking the above amounts, the Court finds that a reduction of \$10,287.50 is appropriate.

Based on the foregoing, the Court is inclined to find the remaining figure of \$8,673.75 to be a reasonable amount of fees for the actions taken by Plaintiff in opposing the Motion and in drafting the Motion for Default Judgment.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Douglas Jay Roger

Represented By

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CONT... Douglas Jay Roger

Chapter 7

Summer M Shaw

Defendant(s):

Don Cameron Burns

Represented By
Don C Burns

Movant(s):

Don Cameron Burns

Represented By
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01163 Revere Financial Corporation v. Burns

#25.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01163. Complaint by Revere Financial Corporation against Don C. Burns. (12 (Recovery of money/property - 547 preference)),(11 (Recovery of money/property - 542 turnover of property)),(14 (Recovery of money/property - other)),(91 (Declaratory judgment))

From: 8/31/16, 11/2/16, 1/11/17, 3/8/17, 6/7/17, 8/2/17

Also #23 & #24

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Don Cameron Burns

Represented By
Don C Burns

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar

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CONT...

Douglas Jay Roger

Carmela Pagay
Franklin R Fraley Jr

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12:30 PM

6:16-18182 Douglas Edward Goodman

Chapter 13

Adv#: 6:16-01277 Reynoso v. Goodman et al

#1.00 CONT Status Conference RE: [13] Amended Complaint by Michael J Hemming on behalf of Mark & Natasha Reynoso against Anne Louise Goodman, Douglas Edward Goodman. (RE: related document(s)1 Adversary case 6:16-ap-01277. Complaint by Mark & Natasha Reynoso against Douglas Edward Goodman, Anne Louise Goodman. false pretenses, false representation, actual fraud) filed by Plaintiff Mark & Natasha Reynoso)

From: 5/4/17

EH__

Docket 13

***** VACATED *** REASON: CONTINUED TO 8/31/17 AT 12:30 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Defendant(s):

Theresa Mann

Represented By
Andrew L Leff

Jose Pastora

Represented By
Andrew L Leff

Douglas Edward Goodman

Represented By
Edward T Weber

Anne Louise Goodman

Represented By
Edward T Weber

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CONT... Douglas Edward Goodman

Chapter 13

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Plaintiff(s):

Mark & Natasha Reynoso

Represented By
Michael J Hemming

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:16-18182 Douglas Edward Goodman and Anne Louise Goodman

Chapter 13

#2.00 CONT Motion RE: Objection to Claim Number 11 by Claimant Natasha Reynoso and Mark Reynoso
HOLDING DATE

From: 5/4/17

EH__

Docket 44

*** VACATED *** REASON: CONTINUED TO 8/31/17 AT 12:30 P.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Movant(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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CONT... Douglas Edward Goodman and Anne Louise Goodman

Chapter 13

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2:00 PM

6:14-11765 Denise Barrow

Chapter 7

#3.00 OSC re Order To Docket Information In Support Of Bodily Detention Request Under Seal; And order Issuing Bodily Detention Request for Marla Perez

EH__

Docket 68

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Denise Barrow

Pro Se

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
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Monday, August 28, 2017

Hearing Room 303

10:00 AM

6:15-19998 Jack C Pryor

Chapter 7

#1.00 Evidentiary hearing re OSC Why Debtor Should Not Be Held in Further Contempt and Be Bodily Detained Until Such Time as He Complies with Court Orders

From: 6/21/17

EH__

Docket 263

Party Information

Debtor(s):

Jack C Pryor

Represented By
Trent Thompson

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Brandon J Iskander

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Hearing Room 303

2:00 PM

6:16-17768 Dispatch Transportation LLC

Chapter 7

#2.00 CONT Motion For Order Approving Sale of Estate Property subject to Overbid pursuant to 11 U.S.C Sect 363
(Holding Date)

From: 7/31/17

EH__

Docket 82

Party Information

Debtor(s):

Dispatch Transportation LLC

Represented By
Leonard M Shulman
Elyza P Eshaghi

Movant(s):

Charles W Daff (TR)

Represented By
Toan B Chung

Trustee(s):

Charles W Daff (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
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Tuesday, August 29, 2017

Hearing Room 303

10:00 AM

6:16-20553 Diana Cescolini

Chapter 13

#1.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 25840 Iris Avenue #C, Moreno Valley, CA 92555

MOVANT: U.S. BANK NATIONAL ASSOCIATION

EH__

Docket 33

Tentative Ruling:

8/29/2017

Service is Proper
Opposition: Limited

Parties to discuss possible adequate protection terms.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Diana Cescolini

Represented By
John F Brady

Movant(s):

U.S. BANK NATIONAL

Represented By
Dane W Exnowski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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10:00 AM

6:17-10769 Semone Ramone Monroe

Chapter 13

#2.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 32545 Machado St Lake Elsinore CA 92530

MOVANT: WELLS FARGO BANK NA

From: 6/27/17

EH__

Docket 40

***** VACATED *** REASON: CONTINUED TO 10/31/17 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Semone Ramone Monroe

Represented By
Jenny L Doling

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Tuesday, August 29, 2017

Hearing Room 303

10:00 AM

6:17-11245 Bryan D. Chriss

Chapter 13

#3.00 Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Chriss v. Chriss; Docket Number FAMSS1206234; Pending Superior Court of California, County of San Bernardino

MOVANT: AMBER CHRISS

EH__

Docket 53

Tentative Ruling:

8/29/17

"It is appropriate for bankruptcy courts to avoid incursions into family law matters out of considerations of court economy, judicial restraint, and deference to our state court brethren and their established expertise in such matters." *In re Stanwyck*, 2008 WL 8448839 at *4 (B.A.P. 9th Cir. 2008) (quoting *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985)). Furthermore, 11 U.S.C. § 362(b)(2)(A)(ii)-(iv) provides exceptions to the automatic for certain matters that are within the scope of the motion.

There are, however, requests contained within the motion that extend beyond the scope of the exceptions and the *Stanwyck* decision, requests that involve "the division of property that is property of the estate." The appropriate balance is to allow the state court to conduct equitable distribution proceedings in state court, while this Court retains jurisdiction over distributions from, and claims against, the estate. *See, e.g., In re Robbins*, 964 F.2d 342, 345-46 (4th Cir. 1992) ("[T]he bankruptcy court correctly placed equitable distribution disputes in the category of cases in which state courts have a special expertise and for which federal courts owe significant deference Other courts that have considered the issue of lifting an automatic stay in order to let equitable distribution proceedings conclude in state court have sensibly done so while retaining jurisdiction to make the subsequent distributions from the estate."); *In re Roger*, 539 B.R. 837, 845 (C.D. Cal. 2015) ("According to the court in *Curtis*, the most important factor in determining whether to grant relief from the automatic stay to

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CONT... Bryan D. Chriss

Chapter 13

permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate."). The factors the Court should consider on a motion for relief from stay to proceed in a non-bankruptcy forum are the *Curtis* factors. *See, e.g., In re Roger*, 539 B.R. 837, 844-45 (C.D. Cal. 2015). The application of these factors in a divorce dissolution proceeding, such as this, generally results in a finding that granting relief from stay is proper. *See, e.g., In re Taub*, 438 B.R. 39, 45-50 (Bankr. E.D.N.Y. 2010) (applying *Sonnax* factors, which are identical to the *Curtis* factors).

In accordance with the legal standard outlined above, the Court is inclined to GRANT the motion. Movant will be allowed to proceed in state court to a final judgment. The stay will remain in effect with respect to the enforcement of any judgment against Debtor or property of the bankruptcy estate, subject to the exceptions outlined in § 362(b)(2)(A)(ii)-(iv), and this Court retains jurisdiction over distributions from, and claims against property, property of the estate.

Movant's motion does not make clear, however, what steps Movant seeks to take if granted relief from stay. Parties to discuss status of divorce proceeding.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Bryan D. Chriss

Represented By
Michael Smith
Cynthia L Gibson
Sundee M Teeple

Movant(s):

Amber Chriss

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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10:00 AM

6:17-13953 Brenda Arlene Lee

Chapter 7

#4.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2012 TOYOTA PRIUS-4 CYL. VIN: JTDKN3DU7C1601431

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 11

Tentative Ruling:

8/29/2017

Service is Proper

Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Brenda Arlene Lee

Represented By
David Lozano

Movant(s):

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

Represented By
Jennifer H Wang

Trustee(s):

Steven M Speier (TR)

Pro Se

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Tuesday, August 29, 2017

Hearing Room 303

10:00 AM

6:17-14023 Yvonne L Sanchez and Oscar Sanchez

Chapter 7

#5.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2016 NISSAN ALTIMA, VIN #
1N4AL3AP2GN383371

MOVANT: NISSAN MOTOR ACCEPTANCE CORPORATION

EH__

Docket 21

Tentative Ruling:

8/29/17

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2).
GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative
request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or
written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Yvonne L Sanchez Pro Se

Joint Debtor(s):

Oscar Sanchez Pro Se

Movant(s):

NISSAN MOTOR ACCEPTANCE Represented By
Michael D Vanlochem

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CONT... Yvonne L Sanchez and Oscar Sanchez

Chapter 7

Trustee(s):

Larry D Simons (TR)

Pro Se

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10:00 AM

6:17-16439 Oscar Avila

Chapter 13

#6.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate (Real Property) 5219 Washington Ave Chino CA 91710.

MOVANT: OSCAR AVILA

EH__

Docket 8

Tentative Ruling:

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Oscar Avila

Represented By
Sanaz S Bereliani

Movant(s):

Oscar Avila

Represented By
Sanaz S Bereliani
Sanaz S Bereliani

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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10:00 AM

6:17-16455 Elizabeth Jucaban Tuason

Chapter 13

#7.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 1695 La Praix St., Highland CA 92346

MOVANT: ELIZABETH JUCABAN TUASON

EH__

Docket 18

Tentative Ruling:

8/29/17

The Court is inclined to DENY the motion. First of all, the Court notes that a motion to continue the automatic stay requires fourteen days notice, but, here, Debtor has only provided twelve days notice. Second, the motion does not provide clear and convincing evidence regarding Debtor's financial situation, specifically with regard to: (1) how much money was sent to Debtor's brother and whether further money might be sent; (2) whether Debtor may continue to assist her children (Debtor's schedules state that her adult son and daughter in law live with her, along with two grandchildren); (3) when she stopped work (evidence presented indicates May 17, 2017, however Trustee's motion to dismiss was filed prior to May 17); and (4) why Debtor did not oppose Trustee's motion to dismiss.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Elizabeth Jucaban Tuason

Represented By
Brad Weil

Movant(s):

Elizabeth Jucaban Tuason

Represented By
Brad Weil

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CONT... Elizabeth Jucaban Tuason

Chapter 13

Brad Weil
Brad Weil

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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10:00 AM

6:17-16473 Timothy Marvin Witherspoon and Deidra Latrece

Chapter 7

#8.00 Motion for relief from the automatic stay with supporting declarations
UNLAWFUL DETAINER RE: 1030 Sunbeam Ln, Corona, CA 92881

MOVANT: MORGAN PICKS TWO LLC

EH__

Docket 11

Tentative Ruling:

8/29//2017

Service is Proper
Opposition: None

The Court is inclined to GRANT the motion, as the subject property was sold at foreclosure prior to the petition date and the deed was recorded timely pursuant to state law. Movant's alternative request, that the automatic is not applicable under § 362(b)(22)-(23), lacks merit because Movant has not commenced any eviction, unlawful detainer action, or similar proceeding, nor do Debtors reside at the property under a lease or rental agreement, and, therefore, the alternative request is DENIED.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Timothy Marvin Witherspoon

Represented By
Steven A Alpert

Joint Debtor(s):

Deidra Latrece Witherspoon

Represented By
Steven A Alpert

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CONT... Timothy Marvin Witherspoon and Deidra Latrece

Chapter 7

Movant(s):

Morgan Picks Two, LLC

Represented By
Barry L O'Connor

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:17-16316 Claudia Acevedo

Chapter 7

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

MOVANT: CLAUDIA ACEVEDO

EH__

Docket 8

Tentative Ruling:

8/29/17

The Court is inclined to DENY the motion. Debtor bears the burden to prove, through clear and convincing evidence, that the case was not filed in bad faith. As is outlined in U.S. Bank's opposition, certain real property located at 16462 Ridge Field Dr., Riverside, CA 92503, has been the subject of multiple unauthorized grant deeds and at least seven bankruptcy cases since 2010. Moreover, secured creditors were not served pursuant to Rule 7004. For those reasons, and as otherwise set forth in the opposition, Debtor has failed to demonstrate that this case was filed in good faith pursuant to § 362(c)(3)(B).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Claudia Acevedo

Represented By
Richard McAndrew

Movant(s):

Claudia Acevedo

Represented By
Richard McAndrew

Trustee(s):

Steven M Speier (TR)

Pro Se

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10:00 AM

6:17-15077 Claudia Acevedo

Chapter 7

#10.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 16462 Ridge Field Drive, Riverside, California 92503

MOVANT:U.S. BANK NATIONAL ASSOCIATION

EH__

Docket 23

Tentative Ruling:

8/29/2017

This matter is related to matters #9 and 11. Please see the corresponding tentative rulings for further information.

8The motion at issue relates to the foreclosure sale of certain property located at 16462 Ridge Field Drive, Riverside, CA 92503 (the "Property"). A brief history of the property is necessary to understand the respective rights in the Property.

On June 23, 2006, Carlos Vera ("Vera") obtained the property through a loan from Wells Fargo. On October 20, 2006, Vera executed a grant deed, conveying the Property to Jose Guerrero ("Guerrero"). The deed was recorded on May 25, 2007. A notice of default was issued on January 26, 2009, and recorded on January 29, 2009. During the first half of 2010, Guerrero filed three bankruptcies, all of which were summarily dismissed, and Vera filed one, in which Wells Fargo obtained relief from stay.

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CONT... Claudia Acevedo

Chapter 7

On May 23, 2012, Guerrero executed a grant deed, conveying the Property to himself and Jose Jimenez ("Jimenez") as joint tenants, one day before a scheduled foreclosure sale. Jimenez had, at the time, a pending Chapter 13 bankruptcy. On August 8, 2012, Guerrero executed another grant deed, conveying his interest to HACBED, Inc. ("HACBED"). The grant deed was recorded on January 19, 2013.

On October 16, 2016, Guerrero filed another bankruptcy, which was, again, summarily dismissed. A second foreclosure sale was later scheduled for June 19, 2017. Earlier, on May 14, 2017, HACBED executed a warranty deed, transferring a 10% interest in the Property to Debtor. The warranty deed was recorded on June 29, 2017. Less than three weeks later, Debtor filed the instant bankruptcy case the same day as the foreclosure, which was summarily dismissed. The bankruptcy case was filed a matter of minutes after the recording of the deed from HACBED and a matter of minutes before the scheduled foreclosure sale. Debtor faxed a notice of the bankruptcy filing to Wells Fargo three minutes before the scheduled foreclosure sale. Debtor also states that telephonic notice was provided to Wells Fargo prior to the sale, but a specific time is not provided.

After the foreclosure sale was held, on June 27, 2017, GW filed an unlawful detainer case in state court. Debtor requests the reconveyance of the property, dismissal of the unlawful detainer action, \$10,000 in punitive damages, and \$2,755 in actual damages.

11 U.S.C. § 362(d) states:

(d) On 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 such as by terminating, *annulling*, modifying, or condition such stay –

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(emphasis added); *see also In re Schwartz*, 954 F.2d 569, 573 (9th Cir. 1992) ("If a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay, and whether violations of the stay are void or voidable is not at issue.").

The BAP, in *In re Fjeldsted*, noted the absence of a clear standard for annulment of the automatic stay. 293 B.R. 12, 21 (B.A.P. 9th Cir. 2003) ("There is less appellate clarity, however, in enunciating a test for retroactive stay relief. Inconsistent standards have thus developed, which run the gamut from such relief being justified only in 'extreme circumstances' to giving the court 'wide latitude' to 'balance the equities' on a case-by-case basis."). The BAP's most recent announcement of the standard for annulment of the automatic stay stated the following:

Determining whether cause exists to annul the stay is a case-by-case inquiry based on a balance of the equities. In conducting this inquiry the bankruptcy court, among other factors, should consider whether the creditor knew of the bankruptcy when violating the stay and whether the debtor's conduct was unreasonable, inequitable or prejudicial to the creditor.

In *Fjeldsted*, we approved additional factors for consideration in assessing the equities. The twelve nonexclusive factors are: (1) number of filings; (2) whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors; (3) a weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser; (4) the debtor's overall good faith (totality of circumstances test); (5) whether creditors knew of stay but nonetheless took action, thus compounding the problem; (6) whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules; (7) the relative ease of restoring parties to the status quo ante; (8)

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the costs of annulment to debtors and creditors; (9) how quickly creditors moved for annulment, or how quickly debtor moved to set aside the sale or violative conduct; (10) whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief; (11) whether annulment of the stay will cause irreparable injury to the debtor; and (12) whether stay relief will promote judicial economy or other efficiencies. The Panel in *Fjeldsted* cautioned that the twelve factors are merely a framework for analysis and not a scorecard, and that in any given case, one factor may so outweigh the others as to be dispositive.

In re Estavan Capital LLC, 2015 WL 7758494 at *5 (B.A.P. 9th Cir. 2015) (citations and quotations omitted).

While *Fjeldsted* cautioned that the enumerated factors are not a scorecard, it is clear that the majority of the factors, including, in particular, Debtor's lack of good faith, weigh in favor of annulling the stay. One factor that is not entirely clear is when, and by what method, Wells Fargo learned of the bankruptcy filing. According to Wells Fargo, it did not learn of the bankruptcy until eighteen days after dismissal of the bankruptcy (coincidentally, the day the case was dismissed) and Wells Fargo asserts that it learned of the bankruptcy from the third-party purchaser. On the other hand, Debtor has asserted that she faxed notice of the bankruptcy to Wells Fargo three minutes before the scheduled foreclosure sale. Finally, "Wells Fargo Home Mortgage" was listed on Debtor's creditors matrix and received various notices in the case, while the third-party purchaser was not listed and does not appear to have received any direct notice of the bankruptcy.

Putting aside the issue whether Wells Fargo learned of the bankruptcy, at most, a few minutes before the scheduled foreclosure, the remainder of the factors strongly lean towards annulment of the stay. First and foremost, Debtor's actions in receiving a fractionalized interest, recording the transfer, and faxing Wells Fargo minutes before the foreclosure sale were clearly "unreasonable, inequitable or prejudicial to the creditor." These actions indicate an intention to "hinder and delay" creditors, are

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indicative of bad faith, and, if allowed to stand, would cause prejudice to the bona fide purchaser. Furthermore, the instant bankruptcy case, as well as several previous bankruptcy cases affecting the property after a notice of default was first recorded (in 2009), was summarily dismissed for failure to comply with the Bankruptcy Code and Rules. Overall, this web of transfers and bankruptcy filings have helped to delay foreclosure on the subject property for nearly eight years. Weighing against these considerations is Debtor's assertion that a fax was sent to Wells Fargo alerting them of the bankruptcy three minutes before the foreclosure sale. It is not clear that this fax was directly to an appropriate department or individual, and, even if it was, it is not clear that the fax was sent early enough for any appropriate action to be taken. Moreover, the evidence presented by Debtor as to telephonic notice of the bankruptcy filing is lacking in detail and is not reliable. Therefore, after considering the *Fjeldsted* factors asserted above, the Court is inclined to ANNUL the automatic stay.

To the extent Movant requests further relief that is not retroactive in nature, the Court will DENY that relief, including *in rem* relief, because the case has already been dismissed. The Court does not have jurisdiction to entertain prospective requests for relief filed after the dismissal of the bankruptcy case.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Claudia Acevedo

Represented By
Richard McAndrew

Movant(s):

U.S. Bank National Association, as

Represented By
Alexander K Lee

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:17-15077 Claudia Acevedo

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#11.00 CONT Motion For Sanctions for Violation of the Automatic Stay By GW San Diego Properties, LLC and Wells Fargo Bank, National Association

From: 8/23/17

EH__

Docket 15

Tentative Ruling:

8/23/17

PROCEDURAL BACKGROUND

On June 19, 2017, Claudia Acevedo ("Debtor") filed a Chapter 7 voluntary petition. On July 7, 2017, the case was dismissed for failure to file case commencement documents. On July 31, 2017, Debtor filed a motion for remedies for violation of stay by GW San Diego Properties, LLC ("GW"), and Wells Fargo Bank, National Association ("Wells Fargo"). On August 9, 2017, Wells Fargo filed its opposition.

FACTUAL BACKGROUND

The motion at issue relates to the foreclosure sale of certain property located at 16462 Ridge Field Drive, Riverside, CA 92503 (the "Property"). A brief history of the property is necessary to understand the respective rights in the Property.

On June 23, 2006, Carlos Vera ("Vera") obtained the property through a loan from

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Wells Fargo. On October 20, 2006, Vera executed a grant deed, conveying the Property to Jose Guerrero ("Guerrero"). The deed was recorded on May 25, 2007. A notice of default was issued on January 26, 2009, and recorded on January 29, 2009. During the first half of 2010, Guerrero filed three bankruptcies, all of which were summarily dismissed, and Vera filed one, in which Wells Fargo obtained relief from stay.

On May 23, 2012, Guerrero executed a grant deed, conveying the Property to himself and Jose Jimenez ("Jimenez") as joint tenants, one day before a scheduled foreclosure sale. Jimenez had, at the time, a pending Chapter 13 bankruptcy. On August 8, 2012, Guerrero executed another grant deed, conveying his interest to HACBED, Inc. ("HACBED"). The grant deed was recorded on January 19, 2013.

On October 16, 2016, Guerrero filed another bankruptcy, which was, again, summarily dismissed. A second foreclosure sale was later scheduled for June 19, 2017. Earlier, on May 14, 2017, HACBED executed a warranty deed, transferring a 10% interest in the Property to Debtor. The warranty deed was recorded on June 29, 2017. Less than three weeks later, Debtor filed the instant bankruptcy case the same day as the foreclosure, which was summarily dismissed. The bankruptcy case was filed a matter of minutes after the recording of the deed from HACBED and a matter of minutes before the scheduled foreclosure sale. Debtor faxed a notice of the bankruptcy filing to Wells Fargo three minutes before the scheduled foreclosure sale. Debtor also states that telephonic notice was provided to Wells Fargo prior to the sale, but a specific time is not provided.

After the foreclosure sale was held, on June 27, 2017, GW filed an unlawful detainer case in state court. Debtor requests the reconveyance of the property, dismissal of the unlawful detainer action, \$10,000 in punitive damages, and \$2,755 in actual damages.

DISCUSSION

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11 U.S.C. § 362(a)(3), (4) states

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of –

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate

(5) any act to create, perfect, or enforce any lien against property of the estate

Debtor argues that Wells Fargo and GW violated the automatic stay through holding a post-petition foreclosure sale, and, subsequently filing an unlawful detainer action, respectively. Wells Fargo raises the following four arguments in opposition to Debtor's motion: (1) that Debtor did not have an interest in the Property; (2) there is cause for annulment of the automatic stay; (3) Wells Fargo's actions were not willful; and (4) no damages were suffered.

I. Property Interest

The basis for Wells Fargo's argument that Debtor did not have an interest in the Property is unclear. It appears to hinge on the following assertion, from page 7 of the opposition: "Vera transferred his entire interest to Guerrero, who in turn transferred his entire interest to himself and Jimenez as joint tenants. Therefore, Guerrero could not transfer the entire interest to HACBED without Jimenez also transferring his joint tenant interest." The grant deed transferring an interest in the Property to HACBED does not, however, purport to transfer the entire interest in the Property, but, instead, states that the grantor, Guerrero, is transferring the entirety of *his* interest. Even if Guerrero had attempted to also transfer the interest of Jimenez, that would not render the entire grant deed void, but would simply result in a finding that the attempt to transfer Jimenez's interest was void.

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II. Annulment of Automatic Stay

11 U.S.C. § 362(d) permits a court to retroactively annul, modify, or condition the automatic stay. *See, e.g., In re Schwartz*, 954 F.2d 569, 572-73 (9th Cir. 1992). As Wells Fargo asserts, if a court retroactively annuls the automatic stay with respect to specific actions, then those actions would cease to be a violation of the automatic stay.

Wells Fargo sets forth, in detail, its argument why cause exists for annulment of the automatic stay. An opposition to a motion is not, however, the appropriate place to request that relief. Because of due process concerns, the Court will continue Debtor's motion for sanctions and equitable relief to allow Wells Fargo to file, and set for hearing, a motion to annul the stay.

III. GW

GW has not filed any opposition to the motion under consideration. Debtor contends that GW violated the automatic stay through the filing of an unlawful detainer action eight days after Debtor's commencement of the instant bankruptcy proceeding. If the filing of the unlawful detainer action is, in fact, a violation of the automatic stay, and, therefore, void, the consequence would not be a reconveyance of the Property. To obtain a reconveyance of the Property, Debtor must establish that the foreclosure sale conducted by Wells Fargo was a violation of the automatic stay. Nevertheless, the remainder of Debtor's requested remedies may be applicable if Debtor is successful in its motion with regard to GW, but unsuccessful in its motion with regard to Wells Fargo.

As noted by Wells Fargo, however, § 362(k) imposes a requirement that a violation be willful in order for an aggrieved debtor to recover damages. 11 U.S.C. § 362(k)(1). Generally, the willfulness requires the presence of two factors: (1) the party knows of

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the automatic stay; and (2) the actions taken in violation of the automatic were intentional. *See, e.g., Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002). Here, there is no evidence in the record that GW knew of the bankruptcy filing. Instead it appears that Debtor only notified Wells Fargo of the commencement of the bankruptcy. Therefore, Debtor has failed to provide evidence establishing that the requirements of § 362(k)(1) are satisfied.

Debtor also requests that GW "be ordered to dismiss the unlawful detainer case." As noted by Debtor, an act that violates the automatic stay is void. *See, e.g., In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 2002). "This rule applies to judicial proceedings." *Leetien*, 309 F.3d at 1215; *see also In re Gruntz*, 202 F.3d 1074, 1082 (9th Cir. 2000). Therefore, GW's filing of the unlawful detainer action may be void, and the state court may have lacked jurisdiction over the unlawful detainer action. *See In re Gruntz*, 202 F.3d at 1083 ("[A] reverse *Rooker-Feldman* situation is presented when state courts decide to proceed in derogation of the stay, because it is the state court which is attempting impermissibly to modify the federal court's injunction.). If the state court lacked jurisdiction to hear the unlawful detainer, then the unlawful detainer action must be dismissed.

If Wells Fargo is successful, however, in annulling the stay, however, then the foreclosure sale of June 19, 2017, will be valid. If the foreclosure sale is valid, then it would appear that the automatic stay provisions cited by Debtor, § 363(a)(3) & (5), would not be applicable, since the Property, at the time of the filing of the unlawful detainer action, would not have been property of the debtor or property of the estate. Furthermore, § 362(a)(1) would be inapplicable, because the foreclosure sale having been held post-petition, GW's unlawful detainer action is not an action that "could have been commenced before the commencement" of the bankruptcy case. Therefore, the validity of the unlawful detainer action filed by GW depends upon Wells Fargo's success in obtaining annulment of the automatic stay.

TENTATIVE RULING

The Court is inclined to CONTINUE the matter for Wells Fargo to file a motion to

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annul the automatic stay.

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APPERANCES REQUIRED.

Party Information

Debtor(s):

Claudia Acevedo

Represented By
Richard McAndrew

Movant(s):

Claudia Acevedo

Represented By
Richard McAndrew

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01225 Cambridge Medical Funding Group II, LLC v. Allied Injury Management,

#12.00 CONT Status Conference Re: Complaint by Cambridge Medical Funding Group II, LLC against Allied Injury Management, Inc., John C. Larson. 02 - Other e.g. other actions that would have been brought in state court if unrelated to bankruptcy

From: 11/1/16, 12/6/16, 1/31/17, 2/28/17, 3/28/17, 5/30/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

John C. Larson

Pro Se

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Plaintiff(s):

Cambridge Medical Funding Group

Represented By
Kenneth Hennesay

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

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CONT... Allied Injury Management, Inc.

Chapter 11

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6:16-14273 Allied Injury Management, Inc.

Chapter 11

#13.00 CONT U.S. Trustee Motion to dismiss or convert Chapter 11 Case

From: 6/27/17, 7/11/17, 8/1/17, 8/22/17

EH__

Docket 266

Tentative Ruling:

7/11/17

BACKGROUND

On May 11, 2016, Debtor filed a Chapter 11 voluntary petition. Debtor operated a medical account receivable collection service. On November 30, 2016, a Chapter 11 trustee was appointed.

On June 2, 2017, UST filed a motion to dismiss the Chapter 11 case for failure to pay quarterly fees of either \$9,750 or \$6,825, which were delinquent as of May 1, 2017. On June 13, 2017, the Chapter 11 trustee filed opposition to the motion to dismiss.

DISCUSSION

11 U.S.C. § 1112(b) provides that a case may be dismissed or converted for cause. Section 1112(b)(4) enumerates certain examples of cause, including "failure to pay any fees or charges required under chapter 123 of title 28." 28 USC § 1930(a)(6) imposed the statutory fees for Chapter 11 cases. Therefore, cause exists to convert the

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CONT... Allied Injury Management, Inc.
case when Chapter 11 quarterly fees are not paid.

Chapter 11

The Chapter 11 trustee states, however, that \$6,000 of the past due fees were paid on June 12, 2017, and that the Chapter 11 trustee will pay the remaining balance.

TENTATIVE RULING

Chapter 11 trustee to inform the Court whether the Chapter 11 quarterly fees have been paid in full.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

United States Trustee (RS)

Represented By
Michael J Bujold
Abram Feuerstein esq
Everett L Green
Mohammad Tehrani

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

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6:16-14273 Allied Injury Management, Inc.

Chapter 11

#14.00 CONT Order (1) Setting Scheduling Hearing And Case Management Conference And (2) Requiring Status Report

From: 6/7/16, 8/30/16, 9/14/16, 10/20/16, 10/25/16, 12/6/16, 1/10/17, 2/28/17, 3/28/17, 5/30/17

EH__

Docket 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

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6:09-15570 1st Centennial Bancorp

Chapter 7

#1.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 315

Tentative Ruling:

08/30/2017

The total statutory fees requested by the Trustee and Predecessor Trustee equals \$391,169.82. However, based on the Court's recalculation of amounts permitted to be paid based on amounts distributed, the cap of funds available for distribution to the Trustees is \$390,985.32. The discrepancy is apparently created because, although the Summary of the Trustee Final Report indicates total receipts of \$12,257,844.09, the Trustee's computation of compensation indicates that total disbursements were \$12,263,994.09. To address this, the Court has reduced the fee for each Trustee by the pro-rata percentage of the \$184.50 difference. The Trustee expenses and Applications for compensation by the Trustee's professionals are otherwise allowed and approved as follows:

Trustee simons

Fees \$216,897.30

Expenses \$495

Trustee cisneros

Fees \$174,088.02

Expenses \$387.64

Shulman hedges llp

Fees \$4,665 (\$124,737 already paid)

Expenses \$0

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**CONT... 1st Centennial Bancorp
Parker Mills LLP**

Chapter 7

Fees \$17,950

Expenses \$156.32

Hahn Fife & Company LLP Request

Fees \$34,481.50

Expenses \$628.80

APPEARANCES REQUIRED.

Party Information

Debtor(s):

1st Centennial Bancorp

Represented By
Mark C Schnitzer
Robert S Cooper

Trustee(s):

Larry D Simons (TR)

Represented By
Leonard M Shulman
William K Mills

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6:12-21177 William G Decker

Chapter 7

#2.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 102

Tentative Ruling:

08/30/2017

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee and his professionals has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, and the applications of the Trustee's professionals, the following administrative claims will be allowed:

TRUSTEE

Fees \$2,702.93
Expenses \$0

COUNSEL FOR TRUSTEE

Fees \$17,839.97
Expenses \$935.38

ACCOUNTANT

Fees \$1,305.03
Expenses \$19.26

APPEARANCES WAIVED. The applications for compensation are approved and the trustee and associated professionals may submit on the tentative.

Party Information

Debtor(s):

William G Decker

Represented By
John M Boyko

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CONT... William G Decker

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Trustee(s):

Howard B Grobstein (TR)

Represented By
Nina Z Javan
Meghann A Triplett

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6:16-20421 Blanca Alicia Alvillar-Mamlouk and Debbie Leon-Alvillar

Chapter 7

#3.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 35

Tentative Ruling:

08/30/2017

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the following administrative claims will be allowed:

Trustee Fees: \$ 1,365.27

APPEARANCES WAIVED. The applications for compensation are approved and the trustee and associated professionals may submit on the tentative.

Party Information

Debtor(s):

Blanca Alicia Alvillar-Mamlouk

Represented By
William Radcliffe

Joint Debtor(s):

Debbie Leon-Alvillar

Represented By
William Radcliffe

Trustee(s):

Howard B Grobstein (TR)

Pro Se

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11:00 AM

6:15-16613 Kenneth Edward Peardon

Chapter 7

#4.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 91

Tentative Ruling:

08/30/2017

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee and his professionals has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, and the applications of the Trustee's professionals, the following administrative claims will be allowed:

TRUSTEE

Fees \$6,000

Expenses \$153

COUNSEL FOR TRUSTEE

Fees \$25,000

Expenses \$1,302.67

ACCOUNTANT

Fees \$1,377

Expenses \$231.90

APPEARANCES WAIVED. The applications for compensation are approved and the trustee and associated professionals may submit on the tentative.

Party Information

Debtor(s):

Kenneth Edward Peardon

Represented By
Javier H Castillo

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CONT... Kenneth Edward Peardon

Chapter 7

Trustee(s):

Todd A. Frealy (TR)

Represented By

Lindsey L Smith

Levene Neale Bender Yoo & Brill LLP

Irving M Gross

Anthony A Friedman

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11:00 AM

6:16-14390 Jina Soo Choi

Chapter 7

#5.00 CONT Motion of United States Trustee For An Order Disgorging Fees, Assessing Damages, And Imposing Fines And Against Bankruptcy Petition Preparer Sandra Cooper Pursuant to 11 U.S.C. § 110

CASE DISMISSED 3/6/17

From: 4/6/17, 4/26/17, 8/2/17

EH__

Docket 70

Tentative Ruling:

08/30/2017

On July 18, 2017, the UST filed a Supplemental Declaration of Hee Chang Choi. The Supplemental Declaration asserts unequivocally that it was Sandra Cooper's idea to file the bankruptcy case, that the bankruptcy filing was made in connection with services paid by the Debtor and her husband to Ms. Cooper in exchange for loan modification services, and that Ms. Cooper filed the bankruptcy without the authorization of the Debtor and her husband.

Ms. Cooper has failed to respond to the Supplemental Declaration. Based on the facts set forth in the Declarations of the Debtor and her husband, the Court finds that Ms. Cooper performed bankruptcy petition preparer services and is a BPP within the meaning of §110. Thus, for the reasons set forth in the Motion of the UST, the Court's tentative ruling is that the Motion be granted and that Ms. Cooper be ordered to:

1. Pay statutory damages of \$2,000,
2. Disgorge \$2,000 paid to Ms. Cooper by the Debtor and her husband; and
3. Pay fines directly to the UST in the sum of \$21,000.

APPEARANCES REQUIRED.

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CONT... Jina Soo Choi

Chapter 7

04/26/2017

BACKGROUND

On May 16, 2016 ("Petition Date"), Jina Soo Choi ("Debtor") filed her petition for chapter 13 relief. On August 4, 2016, the case was converted to a case under chapter 7. On January 6, 2017, the Debtor moved the Court for an order dismissing her case. The case was dismissed on March 6, 2017.

On March 10, 2017, the Office of the United States Trustee ("UST") filed its Motion of United States Trustee For An Order Disgorging Fees, Assessing Damages, And Imposing Fines And Against Bankruptcy Petition Preparer Sandra Cooper Pursuant to 11 U.S.C. § 110 ("Motion"). The Motion was amended on March 29, 2017.

On April 5, 2017, Sandra Cooper ("Cooper") filed her opposition to the Motion ("Opposition"). On April 19, 2017, the UST filed its reply to the Opposition ("Reply").

DISCUSSION

The Motion asserts that Cooper violated 11 U.S.C. § 110 by failing to disclose her identity as required by statute, by executing the Debtor's signature, and by failing to furnish copies of the filed bankruptcy documents to the Debtor. Based thereon, the UST requests disgorgement of fees, statutory damages of \$2,000 pursuant to § 110(i), and payment of fines to the UST in the total sum of \$21,000 (\$6,000 for individual violations in failing to disclose her identity as required under § 110(b)(1) and 110(c)(1), as tripled pursuant to § 110(l)(1) for a total of \$18,000, in addition to \$3,000 for failing to furnish copies of the bankruptcy documents to the Debtor as required under § 110(d)). (Note: the Reply indicates that the UST will not pursue an additional \$3,000 in fines requested by the Motion for executing documents on behalf of the Debtor unless the Court determines that an evidentiary hearing is appropriate).

By her Opposition, Cooper disputes that she is a bankruptcy petition preparer (a "BPP"). Cooper asserts that her assistance was limited to filing the bankruptcy petition ("walking in his paperwork") on behalf of Hee Chang Choi (the Debtor's husband). (Opposition at ¶ 5). Cooper further asserts that she never met the Debtor and instead that she was asked to assist the Debtor's husband with obtaining a loan modification (*Id.* at ¶¶2-3). Cooper disputes the allegation that she received any

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money either from the Debtor or from the Debtor's husband (*Id.* at ¶ F) and instead repeatedly asserts that she was only assisting the Debtor's husband on the request of an unidentified third party who had been helping the Debtor's husband with a "Free and Clear" program. (Cooper Declaration).

In *In re Reynoso*, the Ninth Circuit provided examples of cases in which a party has been properly deemed a bankruptcy petition preparer. As the Ninth Circuit explained,

It goes without saying that the customer must provide data to the preparer, and the customer's role in printing or otherwise reproducing the forms before filing does not alter the role of the preparer. Moreover, § 110 does not require that bankruptcy petition preparers have in-person interactions with their customers. *Cf. Ferm v. U.S. Trustee (In re Crowe)*, 243 B.R. 43, 49-50 (9th Cir. BAP 2000) (holding that the author of an instructional book on bankruptcy petitions who guaranteed buyers of the book that he would complete their forms for free if they were unable to do so themselves was, in fact, presenting himself as a bankruptcy petition preparer as defined by § 110(a)(1)), *aff'd*, 246 F.3d 673 (9th Cir.2000) (unpublished table decision); *In re Doser*, 281 B.R. 292, 303-04 (Bankr.D.Idaho 2002) (reasoning that a franchisor who receives information that was solicited in a face-to-face interaction between the franchisee and the customer and uses that information to prepare bankruptcy documents, but never meets with the customer directly, is a bankruptcy petition preparer), *aff'd*, 412 F.3d 1056.

In re Reynoso, 477 F.3d 1117, 1123–24 (9th Cir. 2007).

The Cooper Opposition and supporting declaration are vague as to the details of how or why Cooper was engaged to work with the Debtor's husband. Cooper repeatedly makes reference to a third party that was a point of contact between the Debtor's husband and her. However, this third party is never identified. Additionally, Cooper indicates she was only helping the alleged third party but disputes that she ever received money in connection with her assistance and disputes that she did anything other than "walk in" the petition documents to the Court. Cooper's assertions, however, are not credible. There is no indication of the nature of Cooper's

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relationship with the alleged third party and no detail as to why she would assist the Debtor's husband or the alleged third party agent without any compensation. The Choi Declaration provided by the UST makes reference to a third party who the Debtor asserted was a patient of the Debtor's husband. The Debtor's declaration asserts that the patient referred her husband to Cooper for the purpose of negotiating a loan modification. (Mot. at Exh. 1, Choi Decl. ¶7). Cooper correctly points out that the information regarding the third party/patient is hearsay. However, the remainder of the Choi declaration unequivocally identifies Cooper, and only Cooper, as the point of contact for all communications regarding the filing of the bankruptcy for the Debtor. (*Id.* at ¶¶8-19).

As to the remaining allegations of the Motion, Cooper by her Opposition has specifically denied all of the allegations of the Motion, including that she executed the petition documents for the Debtor. In an effort to controvert the allegation that she did not disclose her identity, Cooper notes that she was asked for a copy of her driver's license when filing the petition and provided it. Cooper's willingness to provide her Driver's license to the clerk when filing the petition, however, does not overcome her failure to provide specific identifying information on the petition itself as required pursuant to § 110, such as an address and social security number. Thus, assuming the Court finds that Cooper is a BPP within the meaning of the statute, the Court is inclined to GRANT the Motion pursuant to the reduced figure requested by the UST in its Reply.

TENTATIVE RULING

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jina Soo Choi

Represented By
Nicholas S Nassif

Movant(s):

United States Trustee (RS)

Represented By
Mohammad Tehrani
Everett L Green

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Trustee(s):

Howard B Grobstein (TR)

Pro Se

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6:14-17350 Dean L. Springer, Sr. and Tami Jo Springer

Chapter 7

#6.00 Motion to Quash and Motion for Protective Order

EH__

Docket 148

*** VACATED *** REASON: CONTINUED TO 9/20/17 AT 11:00 AM

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr.

Pro Se

Joint Debtor(s):

Tami Jo Springer

Pro Se

Movant(s):

Hilder & Associates

Represented By
Lei Lei Wang Ekvall

Trustee(s):

Larry D Simons (TR)

Represented By
Richard A Marshack
Sarah Cate Hays
D Edward Hays

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6:17-11670 AMANDO MORALES and ALICIA MALDONADO

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#7.00 Motion For Order: (1) Approving Compromise Under Rule 9019 Between (i) the Bankruptcy Estate, (ii) the Debtors, and (iii) Martha E. Guerrero and Eduardo E Guerrero, and (2) Granting Related Relief to Implement the Settlement, Including the Sale of Real Property of the Estate

EH__

Docket 56

Tentative Ruling:

08/30/2017

BACKGROUND

On March 6, 2017, Armando Morales and Alicia Maldonado Jimenez (collectively, the "Debtors") filed their petition for chapter 7 relief. Charles Daff is the duly appointed chapter 7 trustee ("Trustee"). Among the assets of the Debtors' estate is their ownership interest in real property located at 9288 Martha Way, Riverside, CA 92503 (the "Property"). Prepetition, the Property was the subject of a lawsuit (the "State Court Action") commenced by Martha and Eduardo Guerrero (the "Guerreros"). The State Court Action concerns a disputed contract for the sale of the Property. The Guerreros filed for relief from the automatic stay to pursue the State Court Action where they have obtained entry of defaults against the Debtors. The Debtors opposed the Guerreros' Motion for Relief from Stay, which the Trustee joined. In his Joinder, the Trustee asserted that he had reached an agreement with the Debtors to sell the Property in exchange for a carve-out to the Estate from the Debtors' Homestead Exemption (in exchange for a waiver from the Trustee of the requirement that the Debtors reinvest homestead proceeds). The hearing on the Motion for Relief from Stay is currently set for October 24, 2017, at 11:00 a.m.

Now, the Debtors, the Guerreros, and the Trustee seek to resolve their disputes by way of settlement. On August 9, 2017, the Trustee filed his Motion to Approve Compromise under Rule 9019 (the "Motion"). Service was proper and no opposition has been filed.

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DISCUSSION

APPROVAL OF COMPROMISE PURSUANT TO RULE 9019

Rule 9019(a) authorizes the bankruptcy court to approve a compromise or settlement on the trustee's motion and after notice and a hearing. The bankruptcy court must consider all "factors relevant to a full and fair assessment of the wisdom of the proposed compromise." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424, 88 S. Ct. 1157, 20 L. Ed. 2d 1 (1968). In other words, the bankruptcy court must find that the settlement is "fair and equitable" in order to approve it. *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986).

In conducting this inquiry, the bankruptcy court must consider the following factors:

(a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id.

The bankruptcy court enjoys broad discretion in approving a compromise because it "is uniquely situated to consider the equities and reasonableness [of it]" *United States v. Alaska Nat'l Bank (In re Walsh Construction, Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). As stated in *A & C Props.*:

The purpose of a compromise agreement is to allow the trustee and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims. The law favors compromise and not litigation for its own sake, and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision must be

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affirmed.

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Id. (citations omitted).

On the other hand, even though the bankruptcy court has wide latitude in approving compromises, its discretion is not completely unfettered. *See Woodson v. Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). The trustee bears the burden of proving to the bankruptcy court that the settlement is fair and equitable and should be approved. *In re A&C Props.*, 784 F.2d at 1382.

a. Sufficiency of Evidence

The Court shall address the evidence in support of each of the *A & C Props.* factors.

1. The Probability of Success in the Underlying Litigation

At the hearing on the Motion for Relief from Stay on May 30, 2017, the Court and the parties discussed the Debtors' arguments that the Guerreros' purchase and sale agreement for the Property may be an executory contract capable of rejection in the bankruptcy. The Court indicated that additional facts were needed to make a determination as to whether the purchase and sale agreement met the Ninth Circuit requirements for an executory contract. The need for additional evidence and argument, and the uncertainty surrounding the arguments as to the Motion for Relief from Stay support the Trustee's request for approval of settlement of the issues between the Estate and the Guerreros. Additionally, as indicated by the Trustee, absent settlement there is a possibility of extended litigation regarding the amount of the Debtors' homestead exemption.

2. Difficulty of Collection

The Trustee indicates that the risk that the Debtors may spend the exempt funds may hamper collection efforts. The Court is not persuaded that the Trustee could not obtain a legal mechanism to prevent such expenditure such that collection would be difficult. This factor weighs against settlement.

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3. Complexity, Cost, Inconvenience and Delay of Litigation

Although the issues involved in the litigation do not appear overly complex, the Court acknowledges that the amounts involved and the potential net benefit to the Estate from the settlement outweighs the potential benefits of engaging in costly litigation over a relatively small amount of funds for the Estate. This factor weighs heavily in favor of settlement.

4. Interest of Creditors

The proposed settlement is estimated by the Trustee to yield approximately \$35,000 in funds available for the Estate. The Property represents the only asset of the Estate likely to yield any distribution in this case. Given the anticipated costs of continued litigation, the Trustee's agreement with the Debtors for 50% of the net proceeds from the sale of the Property is reasonable and in the best interests of creditors.

5. Sale of the Property

The trustee, after notice and a hearing, may sell property of the estate. 11 U.S.C. § 363(b)(1); *see also Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). The sale must be in the best interests of the estate and the price must be fair and reasonable. *In re Canyon Partnership*, 55 B.R. 520 (Bankr. S.D. Cal. 1985); *see also In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991)(sale must have fair/reasonable price, accurate/reasonable notice to creditors and sale made in good faith). The trustee must articulate some "business justification" for selling estate property out of the "ordinary course of business" before the court may approve the transaction. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Ernst Home Ctr., Inc.*, 209 B.R. 974, 979 (Bankr. W.D. Wash. 1997).

The Trustee's proposed justification for the sale of the Property is that the Property and net proceeds from a sale represents likely the only source of funds for distribution to creditors. Based on the Trustee's representations, a sale of the Property

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is justified.

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a) Bidding Procedures

Generally, bidding procedures must be untainted by self-dealing, encourage bidding and be fair/reasonable/serve the best interests of the estate. *See In re Crown Corp.*, 679 F.2d 774 (9th Cir. 1982).

Here, as part of his compromise motion with the Guerreros, the Trustee contemplates a sale not subject to overbidding. Given that the Court has found the resolution of the legal issues between the Guerreros and the Estate is warranted under Rule 9019, the Court finds that the sale to the Guerreros, not subject to overbidding, is in the best interests of the estate under the specific circumstances of this case.

b) Sale Made in Good Faith

The proposed sale has been brought in good faith and has been negotiated on an "arms- length" basis. The court, in Wilde Horse Enterprises, set forth the factors in considering whether a transaction is in good faith. The court stated:

‘Good faith’ encompasses fair value, and further speaks to the integrity of the transaction. Typical ‘bad faith’ or misconduct, would include collusion between the seller and buyer, or any attempt to take unfair advantage of other potential purchasers. . . . And, with respect to making such determinations, the court and creditors must be provided with sufficient information to allow them to take a position on the proposed sale.

Id. at 842 (citations omitted).

The Court finds that the sale encompasses fair value based on the added risk of litigation which is likely to diminish the value of net proceeds absent a sale to the

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Guerreros as proposed by the Trustee.

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TENTATIVE RULING

Based on the foregoing, the Trustee has demonstrated that the settlement is fair and equitable and the Motion is GRANTED and the settlement is APPROVED as follows:

- (1) Approving the Agreement attached as Exhibit 1 to the Motion;
- (2) Authorizing sale of the Property to the Guerreros pursuant to the terms and conditions of the Agreement;
- (3) Authorizing the Trustee to execute any and all necessary documents to carry out the provisions contemplated in the Agreement as set forth in ¶4 of the prayer for relief; and
- (4) Authorizing waiver of the 6004(h) stay of the sale to the Guerreros.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

AMANDO MORALES

Represented By
William D Gurney

Joint Debtor(s):

ALICIA MALDONADO JIMENEZ

Represented By
William D Gurney

Movant(s):

Charles W Daff (TR)

Represented By
Brandon J Iskander
Lynda T Bui

Trustee(s):

Charles W Daff (TR)

Represented By
Brandon J Iskander
Lynda T Bui

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6:17-15478 Denise Lynn Valeski

Chapter 7

#8.00 Motion to Reconsider Dismissal

EH__

Docket 17

Tentative Ruling:

08/30/2017

BACKGROUND

On June 29, 2017, Denise Valeski ("Debtor") filed her petition for chapter 7 relief. On June 30, 2017, the Debtor was issued a Notice of Dismissal if Required Documents are Not Filed (Docket No. 5) for failure to provide a master mailing list of creditors. The Debtor was given 72 hours to cure the deficiency. On July 5, 2017, the Debtor's case was dismissed for failure to file the require document.

On July 21, 2017, the Debtor filed a Motion to Reconsider the Dismissal ("Motion"). The Motion is unopposed.

DISCUSSION

FRBP 9024 (incorporating FRCP 60), permits the filing of a motion for reconsideration.

In support of the Motion, the Debtor has provided a declaration of Gordon Dayton, the Debtor's counsel, acknowledging the failure to file the Creditor Matrix and indicating that the failure to cure the deficiency prior to the dismissal was owing to the issuance of the Notice on Friday, June 30, 2017, preceding the July 4th holiday.

Here, the Court finds that the failure to file the Creditor Matrix is excusable under the circumstances.

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CONT... Denise Lynn Valeski

Chapter 7

TENTATIVE RULING

The Court's tentative ruling is to GRANT the Motion conditioned upon the Debtor's filing of the Creditor Matrix prior to lodging of the order vacating the order of dismissal.

APPEARANCES WAIVED. Movant to file the Creditor Matrix and lodge an order within 7 days.

Party Information

Debtor(s):

Denise Lynn Valeski

Represented By
Gordon L Dayton

Movant(s):

Denise Lynn Valeski

Represented By
Gordon L Dayton
Gordon L Dayton

Trustee(s):

Robert Whitmore (TR)

Pro Se

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6:14-17899 Gregory William Hewitt

Chapter 7

Adv#: 6:16-01235 Grobstein v. Hewitt

#9.00 CONT Status Conference RE: Adversary 6:16-AP-01235-MH Complaint by Howard B. Grobstein against Pamela Hewitt. Complaint: For Declaratory Relief; For Authority to Sell Real Property in Which Non-Debtor Asserts an Interest; For an Accounting; For Turnover of Property of the Estate; and, To Avoid and Recover Fraudulent Transfers Nature of Suit: (91 (Declaratory judgment, (Approval of sale of property of estate and of a co-owner - 363(h) (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy (11 (Recovery of money/property - 542 turnover of property

From: 12/7/16, 5/31/17

EH__

Docket 1

*** VACATED *** REASON: ADVERSARY DISMISSED 6/19/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gregory William Hewitt

Represented By
Annie Verdries
Lovee D Sarenas

Defendant(s):

Pamela Hewitt

Represented By
Annie Verdries

Plaintiff(s):

Howard B. Grobstein

Represented By
Michael W Davis
Nina Z Javan

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Trustee(s):

Howard B Grobstein (TR)

Represented By
Michael W Davis
David Seror
Reed Bernet
Nina Z Javan

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6:14-16872 William Redfield Barlow, III

Chapter 7

Adv#: 6:17-01021 Whitmore v. E*Trade Securities, LLC et al

#10.00 CONT Status Conference Re: Complaint by Robert Whitmore against E*Trade Securities, LLC. (Charge To Estate - \$350.00). Complaint for Turnover of Property of the Bankruptcy Estate (Attachments: # 1 Adversary Proceeding Cover Sheet # 2 Summons and Notice of Status Conference) Nature of Suit: 11-Recovery of money/property - 542 turnover of property

From: 4/5/17, 6/7/17

EH__

Docket 1

***** VACATED *** REASON: CASE DISMISSED 8/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Redfield Barlow III

Represented By
Michael E Clark
Heather J Canning

Defendant(s):

E*Trade Financial Corporation

Pro Se

E*Trade Securities, LLC

Pro Se

Joint Debtor(s):

Lindsay Marie Barlow

Represented By
Michael E Clark
Heather J Canning

Plaintiff(s):

Robert Whitmore

Represented By
Julie Philippi

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CONT... William Redfield Barlow, III

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Trustee(s):

Robert Whitmore (TR)

Represented By
Julie Philippi
Todd L Turoci

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6:14-12990 Garrick Craig Smedman

Chapter 7

Adv#: 6:17-01121 Smedman et al v. STATE BOARD OF EQUALIZATION

#11.00 Status Conference RE: [1] Adversary case 6:17-ap-01121. Complaint by Craig Smedman against STATE BOARD OF EQUALIZATION. (Fee Not Required \$350.00). Joint Plaintiff Veronica Lee Wilkins Nature of Suit: (91 (Declaratory judgment)),(72 (Injunctive relief - other))

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Garrick Craig Smedman

Represented By
Neil C Evans

Defendant(s):

STATE BOARD OF

Pro Se

Joint Debtor(s):

Veronica Lee Wilkins

Represented By
Neil C Evans

Plaintiff(s):

Veronica Lee Wilkins

Pro Se

Craig Smedman

Represented By
Neil C Evans

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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6:14-14377 Hilary D Hill

Chapter 7

Adv#: 6:15-01206 Speier v. Simmons et al

#12.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01206. Complaint by Steven M Speier against Angela Simmons, David Schanhals, Hilary D Hill

From: 9/23/15, 2/10/16, 5/25/16, 9/28/16, 11/16/16, 1/11/17, 3/29/17, 6/28/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 9/27/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hilary D Hill

Represented By
Matthew D Resnik

Defendant(s):

Hilary D Hill

Pro Se

David Schanhals

Pro Se

Angela Simmons

Pro Se

Plaintiff(s):

Steven M Speier

Represented By
Robert P Goe

Trustee(s):

Steven M Speier (TR)

Represented By
Robert P Goe
Elizabeth A LaRocque

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6:16-19799 Jaison Vally Surace

Chapter 7

Adv#: 6:17-01006 Pringle v. Qadir et al

#13.00 CONT Status Conference RE: Complaint by John P. Pringle against Walie A. Qadir, Marym Qadir, Najlla Qadir. (Charge To Estate). (Attachments: # 1 Adversary Coversheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 3/8/17, 6/28/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 11/1/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Defendant(s):

Najlla Qadir

Represented By
Batkhand Zoljargal

Marym Qadir

Represented By
Batkhand Zoljargal

Walie A. Qadir

Represented By
Batkhand Zoljargal

Plaintiff(s):

John P. Pringle

Represented By
Carmela Pagay
Todd A Frealy

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CONT... Jaison Vally Surace

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Trustee(s):

John P Pringle (TR)

Represented By
Todd A Frealy
Carmela Pagay

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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01199 Revere Financial Corporation v. Bank of Southern California, N.A.

#14.00 Motion to Dismiss Third Amended Complaint

EH__

Docket 61

Tentative Ruling:

08/30/2017

BACKGROUND

On July 29, 2016, Revere Financial Corporation ("RFC" or "Revere"), acting as Liquidating Trustee for the bankruptcy estate of Douglas J. Roger ("Debtor"), filed a complaint for avoidance and recovery of certain transfers made to Bank of Southern California, N.A. ("Defendant" or "BSC"), prepetition. On September 7, 2016, in response to a Motion to Dismiss filed by Defendant, RFC indicated its intent to exercise its right under FRCP 15 to file an amended complaint rather than file opposition to the Defendant's motion.

On September 21, 2016, RFC filed its First Amended Complaint (the "FAC"), alleging the following claims as to Defendant: (1) Intentional Fraudulent Transfer (Count One – Receiver Order); (2) Intentional Fraudulent Transfer (Count Two – Statutory); (3) Preferential Transfer; (4) Unjust Enrichment; and (5) Money Had and Received. At issue is a single August 28, 2013, transfer from OIC Medical Corporation ("OIC") to Defendant of \$408,947 (the "Transfer"). On December 13, 2016, the Court dismissed the FAC with leave to amend. On February 1, 2017, RFC filed its Second Amended Complaint (the "SAC"). On April 7, 2017, the Court granted BSC's Motion to Dismiss the SAC as to all causes of action, with leave to amend as to the First, Second, and Third Causes of Action, and without leave to amend as to the Fourth and Fifth Causes of Action. On July 5, 2017, Revere filed its Third Amended Complaint (the "TAC"). The TAC is again based on the premise that OIC - the Debtor's wholly-owned and controlled medical corporation, held the Transfer solely for the Debtor's benefit or was a mere conduit for the Debtor's attempt to shield the Transfer from the receivership order entered in state court as to Dr. Roger's assets.

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2:00 PM

CONT... Douglas Jay Roger

Chapter 7

On August 4, 2017, BSC filed its Motion to Dismiss the TAC ("Motion"). RFC filed opposition on August 16, 2017 ("Opposition") and a reply to the opposition was filed by BSC on August 23, 2017 ("Reply").

DISCUSSION

Civil Rule 12(b)(6) standards

Under Civil Rule 12(b)(6), made applicable in adversary proceedings through Rule 7012, a bankruptcy court may dismiss a complaint if it fails to "state a claim upon which relief can be granted." In reviewing a Civil Rule 12(b)(6) motion, the trial court must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). However, the trial court need not accept as true conclusory allegations in a complaint or legal characterizations cast in the form of factual allegations. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); *Hartman v. Gilead Scis., Inc. (In re Gilead Scis. Sec. Litig.)*, 536 F.3d 1049, 1055 (9th Cir. 2008).

To avoid dismissal under Civil Rule 12(b)(6), a plaintiff must aver in the complaint "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955). It is axiomatic that a claim cannot be plausible when it has no legal basis. A dismissal under Civil Rule 12(b)(6) may be based either on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. *Johnson v. Riverside Healthcare Sys.*, 534 F.3d 1116, 1121 (9th Cir.2008).

Transfer of an Interest in the Debtor's Property and Liability

The Court, in its tentative rulings on BSC's prior Motions to Dismiss, found that RFC could not prevail on its First through Fifth Claims for Relief because it had not alleged sufficient facts to set forth plausible claims where the funds at issue in the Transfer were transferred to BSC by OIC, not by the Debtor. In its prior analysis, the Court agreed with BSC that because OIC is a distinct legal entity from the Debtor, absent facts indicating that OIC did not have legal dominion over the funds at issue, RFC could not prevail in its claims. Exhibit 1 to the Motion is a redline version of the

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TAC which sets forth the allegations added to the SAC by RFC in an attempt to address the Court's concerns.

The Ninth Circuit has adopted the **more restrictive** dominion test and not the "more lenient" control test regarding the theory of whether an entity is a "mere conduit":

Under the control test, an examining court must evaluate a transaction in its entirety and make a "logical and equitable" determination as to whether "the banks actually controlled the funds or merely served as conduits, holding money that was in fact controlled by either the transferor or the real transferee." Therefore, while similar, "[t]he dominion test focuses on whether the recipient of funds has legal title to them and the ability to use them as he sees fit. The control test takes a more gestalt view of the entire transaction to determine who, in reality, controlled the funds in question."

Id. Here, the Court agrees that many of RFC's additions to the TAC are conclusory and are thus not helpful. However, RFC has made some specific allegations, which if true, may support a theory that OIC did not have "dominion" over the funds deposited by Roger/Ebarb because it would not have had the ability to use the funds in any way it wanted. Specifically, the TAC now includes allegations that:

1. Roger instructed OIC that OIC could not use the money that comprised the Roger Conduit Transfers for any corporate purpose, but only for Roger's personal purposes as and when Roger would instruct OIC (TAC at ¶28.r);
2. Roger instructed OIC that OIC could not use the money that comprised the OIC/BSC Transfer for any corporate purpose, but only for Roger's personal purposes as [sic] and when Roger would instruct OIC (*Id.* at ¶28.t); and
3. Roger instructed OIC, as Roger's agent/depository, to use the money that comprised the OIC/BSC Transfer, which came from the Roger Conduit Transfers to pay Roger's alleged personal debt to BSC.

Although the Court questions whether RFC has information to support these allegations, the Court recognizes that the credibility of RFC's amendments is not at issue on a motion to dismiss. Instead, based on the allegations added in the TAC, it

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appears at least plausible that OIC could not exercise dominion over the funds at issue because it had received specific instructions on how to and how *not* to dispose of the funds.

However, even assuming the Court finds that the TAC alleges facts to support the "mere conduit" theory, *Martinez v. Hutton (In re Harwell)*, 628 F.3d 1312, 1323 (11th Cir. 2010) cited by BSC, undercuts the legal theory that OIC is a "mere conduit" and not a transferee under § 550. Specifically, *Harwell* describes the "mere conduit" theory as an exception to the statutory language of § 550 and indicates that "the conduit rule presumes that the facilitator of funds acts without bad faith, and is simply an innocent participant to the underlying fraud." *Id.* The Harwell Court goes on to hold that a party with "intimate and thorough knowledge of the transactions and their desired effect" cannot be classified as a mere conduit. *Id.*

On this point, the allegations of the TAC actually contradict the claim that OIC is a mere conduit because in Section E, ¶28 of the TAC, RFC asserts that:

- OIC was 100% controlled by Roger;
- OIC had no corporate officers other than Roger;
- OIC had no employees other than Roger;
- Roger personally made all decisions regarding OIC's receiving and holding the Roger Conduit Transfers as agent and depository for Roger, and solely for Roger's benefit, not OIC's.

These facts indicate that OIC could not have been an innocent participant to the underlying fraud and that instead based on the allegations of the TAC it is not plausible that OIC was a mere conduit, because it had intimate and thorough knowledge of the transactions and their desired effect. (TAC, Section E, ¶28).

The Opposition fails to address or distinguish the *Harwell* case, or any of the other cases cited by BSC in its Motion/Reply regarding the requirement that OIC act in good faith to qualify as a "mere conduit". Based on the foregoing, the Court is inclined to GRANT the Motion because RFC has again failed to set forth a plausible claim that property of the Debtor was transferred to BSC where the Transfer was made by the distinct legal entity, OIC.

TENTATIVE RULING

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Based on the foregoing, the Court is inclined to GRANT the Motion and DISMISS the TAC in its entirety. Additionally, RFC has amended the complaint three times since the filing of the initial complaint by the Trustee on July 29, 2016.

RFC has now had numerous opportunities to advance a plausible legal theory on which to pursue the Transfer made to BSC and has failed to cure the issues which have been repeatedly addressed by this Court. The Court finds that amendment would be futile at this juncture and that further amendments would inequitably prejudice BSC, and as such, the Court is inclined to dismiss without leave to amend.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Bank of Southern California, N.A.

Represented By
Kathryn M.S. Catherwood

Movant(s):

Bank of Southern California, N.A.

Represented By
Kathryn M.S. Catherwood
Kathryn M.S. Catherwood
Kathryn M.S. Catherwood
Kathryn M.S. Catherwood

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By

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Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:13-29922 Nancy Ann Howell

Chapter 7

Adv#: 6:14-01070 Law Office of Andrew S. Bisom et al v. Howell

#15.00 OSC Re: Why Plaintiff should Not be Sanctioned for Failure to Appear at Status Conference

EH__

Docket 168

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nancy Ann Howell	Pro Se
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Defendant(s):

Nancy Ann Howell	Pro Se
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Plaintiff(s):

Eisenberg Law Firm, APC	Represented By Andrew S Bisom
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Law Office of Andrew S. Bisom	Represented By Andrew S Bisom
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Trustee(s):

Steven M Speier (TR)	Pro Se
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6:17-10032 Richard Earl Davis, Jr

Chapter 7

Adv#: 6:17-01066 Gumbs et al v. Davis, Jr et al

#16.00 Motion for Default Judgment

EH__

Docket 5

Tentative Ruling:

08/30/2017

TENTATIVE RULING

Plaintiff seeks default judgment be entered against Defendant Richard Earl Davis, Jr. (the "Debtor"). Service of the Motion AND of the Summons and Complaint were all effectuated on the Debtor at "2280 Market Street #220 in Riverside, CA". However, the Debtor's bankruptcy petition indicates his place of residence as "9325 Sunridge Drive in Riverside, CA 92508".

The Court's tentative ruling is to DENY the Motion without prejudice. Movant to lodge an order denying the motion and requesting that the Court issue an alias summons for Movant to serve the summons and complaint at the Debtor's residence as indicated on the bankruptcy petition. Deadlines shall be reset accordingly.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Richard Earl Davis Jr

Represented By
Todd L Turoci

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CONT... Richard Earl Davis, Jr

Chapter 7

Defendant(s):

Two6 Sports Management Pro Se

Richard Earl Davis Jr Pro Se

Movant(s):

Angelo M Gumbs Represented By
Alexander B Boris

Plaintiff(s):

Kandis Gumbs Represented By
Alexander B Boris

Angelo M Gumbs Represented By
Alexander B Boris

Trustee(s):

Steven M Speier (TR) Pro Se

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6:17-10032 Richard Earl Davis, Jr

Chapter 7

Adv#: 6:17-01066 Gumbs et al v. Davis, Jr et al

#17.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01066. Complaint by Angelo M Gumbs , Kandis Gumbs against Richard Earl Davis Jr, Two6 Sports Management . false pretenses, false representation, actual fraud))

From: 6/7/17

EH _____

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Earl Davis Jr

Represented By
Todd L Turoci

Defendant(s):

Two6 Sports Management

Pro Se

Richard Earl Davis Jr

Pro Se

Plaintiff(s):

Kandis Gumbs

Represented By
Alexander B Boris

Angelo M Gumbs

Represented By
Alexander B Boris

Trustee(s):

Steven M Speier (TR)

Pro Se

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6:17-10273 Ever Ramirez Barreto

Chapter 7

Adv#: 6:17-01072 Grobstein, Chapter 7 Trustee v. Barreto Tapia et al

#18.00 Motion for Default Judgment

EH__

Docket 15

Tentative Ruling:

08/30/2017

BACKGROUND

On January 12, 2017 ("Petition Date"), Ever Ramirez Barreto ("Debtor") filed his petition for chapter 7 relief. Howard Grobstein is the duly appointed chapter 7 trustee ("Trustee"). Among the assets of the Debtor's bankruptcy estate is certain real property located at 5592 Ivanhoe Avenue in Riverside, CA (the "Property"). On April 6, 2017, the Trustee filed his Complaint for avoidance of transfer of the Property against Magdalena and Iban Barreto (collectively, "Defendants") pursuant to § 548(a)(1)(A) for actual fraud, and pursuant to § 548(a)(1)(B) as constructive fraud, for recovery of the same pursuant to § 550, and for turnover of the Property pursuant to § 542(a) (the "Complaint"). The Court's Docket reflects that the summons and Complaint were executed on April 7, 2017. Service appears proper. An answer by the Defendants was due on or before May 8, 2017. No answer was filed. The Clerk entered default against both Defendants on May 15, 2017.

On August 8, 2017, the Trustee filed his Motion for Default Judgment ("Motion") and Request for Judicial Notice. The Motion is unopposed.

DISCUSSION

A. Entry of Default

Federal Rule of Civil Procedure 55 states that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as

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CONT...

Ever Ramirez Barreto

Chapter 7

provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." Fed. R. Civ. P. 55(a). Per LBR 7055-1(b)(1), a motion for entry of default judgment shall contain the following:

1. When and against what party default was entered

By her Motion, Plaintiff has also requested entry of default against the Debtor.

2. Whether defaulting party is an infant or incompetent person – ✓ (N/A)
3. Whether the defaulting party is currently on active duty – ✓ (N/A)
4. Whether notice has been served on defaulting party, if required by FRCP 55(b)(2) ✓

B. Admissions

Pursuant to FRBP 7008(b)(6), failure to deny an allegation of the Complaint where a responsive pleading is required constitutes an admission of the allegation.

C. Default Judgment

Factors which may be considered by courts in exercising discretion as to the entry of a default judgment include: (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute considering material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the FRCP favoring decision on the merits. *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

1. Proper Service of Summons and Complaint

The Motion and Summons and Complaint were served on the Defendants at the address of the Property which was transferred to them via Grant Deed by the Debtor on November 10, 2016.

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CONT... Ever Ramirez Barreto

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2. Whether the Default was due to Excusable Neglect

Here, no opposition to the Motion has been filed and as such, there is no evidence before the Court to suggest that Default has been entered due to excusable neglect.

3. Sufficiency of the Complaint & Merits of Plaintiff's claim

Upon default, the factual allegations of the complaint, **except those relating to the amount of damages**, will be taken as true. *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987); "The defendant, by his default, admits the plaintiff's **well-pleaded** allegations of facts, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established." *Nishimatsu Construction Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) (emphasis added); *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978); *Cotton v. Massachusetts Mut. Life Ins. Co.*, 402 F.3d 1267, 1278(11th Cir. 2005) (do not have to take as true facts that are not well-pleaded or conclusions of law).

Here, the facts of the Complaint support the entry of default judgment against the Defendants under either a § 548(a)(1)(B) or 548(a)(1)(A) theory. As set forth more fully in the Motion, the Defendants are close relations of the Debtor, the Debtor transferred the entirety of her interest in the Property to the Defendants a short three months prior to the Petition Date, the transfer of the Property was made as a gift for no consideration, and the timing and form of the transfer indicate an intent to divert assets away from the Debtor's creditors. Based on the facts asserted by the Trustee, the documents filed in support of the Motion, and the failure of the Defendants to file any opposition or response, the Court finds that the Trustee has met his burden in establishing that the Complaint and the merits of the claims warrant the entry of default judgment against the Defendants.

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4. The possibility of a dispute considering material facts

The documents provided by the Trustee unequivocally support the inference that the Debtor transferred her interest in the Property, prepetition, in an effort to delay, hinder or defraud her creditors by denying her bankruptcy estate access to the only asset of value to potentially provide for a distribution to creditors.

5. The strong policy underlying the FRCP favoring decision on the merits

Although default judgments are ordinarily disfavored, termination of a case before hearing the merits is allowed when a defendant fails to defend an action under Fed. R. Civ. P. 55. Here, there has been no defense advanced by the Defendants to this action and the record before this Court strongly favors the entry of default judgment to prevent an injustice worked upon the Debtor's creditors by the Debtor's actions in attempting to divert valuable assets from the bankruptcy estate.

TENTATIVE RULING

Based on the Memorandum of Points and Authorities submitted by the Trustee, the evidence filed in support of the Motion, and the analysis set forth above, the Court is inclined to GRANT the Motion in its entirety. The Trustee is to lodge an order granting the Motion, and separately, a proposed judgment in his favor.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ever Ramirez Barreto

Represented By
Scott D McDonald

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CONT... Ever Ramirez Barreto

Chapter 7

Defendant(s):

Iban Barreto Hernandez Pro Se

Magdalena Barreto Tapia Pro Se

Movant(s):

Howard B. Grobstein, Chapter 7 Represented By
Noreen A Madoyan

Plaintiff(s):

Howard B. Grobstein, Chapter 7 Represented By
Noreen A Madoyan

Trustee(s):

Howard B Grobstein (TR) Represented By
Noreen A Madoyan
Craig G Margulies

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6:17-10273 Ever Ramirez Barreto

Chapter 7

Adv#: 6:17-01072 Grobstein, Chapter 7 Trustee v. Barreto Tapia et al

#19.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01072. Complaint by Howard B. Grobstein, Chapter 7 Trustee against Magdalena Barreto Tapia, Iban Barreto Hernandez for: (1) Avoidance of Actual Fraudulent Transfer [11 U.S.C. § 548(a)(1)(A)]; (2) Avoidance of Constructive Fraudulent Transfer [11 U.S.C. § 548(a)(1)(B)]; (3) Recovery of Avoided Transfer [11 U.S.C. § 550]; and (4) Turnover [11 U.S.C. § 542(a)]

From: 6/21/17

EH _____

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ever Ramirez Barreto

Represented By
Scott D McDonald

Defendant(s):

Iban Barreto Hernandez

Pro Se

Magdalena Barreto Tapia

Pro Se

Plaintiff(s):

Howard B. Grobstein, Chapter 7

Represented By
Noreen A Madoyan

Trustee(s):

Howard B Grobstein (TR)

Represented By
Noreen A Madoyan
Craig G Margulies

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11:00 AM

6:11-12917 Brad Stoddard and Deborah Ann Stoddard

Chapter 13

#1.00 Order to Show Cause Hearing Why Matthew Resnik, Brad and Deborah Stoddard should not be sanctioned

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brad Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Joint Debtor(s):

Deborah Ann Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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12:30 PM

6:16-18182 Douglas Edward Goodman

Chapter 13

Adv#: 6:16-01277 Reynoso v. Goodman et al

#2.00 Status Conference RE: [26] Crossclaim by Anne Louise Goodman, Douglas Edward Goodman against all defendants

Also #3

EH__

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Defendant(s):

Theresa Mann

Represented By
Andrew L Leff

Jose Pastora

Represented By
Andrew L Leff

Douglas Edward Goodman

Represented By
Edward T Weber

Anne Louise Goodman

Represented By
Edward T Weber

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

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CONT... Douglas Edward Goodman

Chapter 13

Plaintiff(s):

Mark & Natasha Reynoso

Represented By
Michael J Hemming

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-18182 Douglas Edward Goodman

Chapter 13

Adv#: 6:16-01277 Reynoso v. Goodman et al

#3.00 CONT Status Conference RE: [13] Amended Complaint by Michael J Hemming on behalf of Mark & Natasha Reynoso against Anne Louise Goodman, Douglas Edward Goodman. (RE: related document(s)1 Adversary case 6:16-ap-01277. Complaint by Mark & Natasha Reynoso against Douglas Edward Goodman, Anne Louise Goodman. false pretenses, false representation, actual fraud) filed by Plaintiff Mark & Natasha Reynoso)

From: 5/4/17, 8/24/17

Also #2

EH__

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Defendant(s):

Theresa Mann

Represented By
Andrew L Leff

Jose Pastora

Represented By
Andrew L Leff

Douglas Edward Goodman

Represented By
Edward T Weber

Anne Louise Goodman

Represented By

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CONT... Douglas Edward Goodman

Chapter 13

Edward T Weber

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Plaintiff(s):

Mark & Natasha Reynoso

Represented By
Michael J Hemming

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-17769 Efren Diaz Estrada

Chapter 13

#4.00 Application for Compensation Motion for Order Allowing and Authorizing Payment of Attorneys' Fees and Expenses to Shulman Hodges & Bastian LLP as an Administrative Expense

EH__

Docket 73

Tentative Ruling:

8/31/17

BACKGROUND

On August 30, 2016, Efren Estrada ("Debtor") filed a Chapter 7 voluntary petition. On December 12, 2016, Estrada received a discharge.

On December 21, 2016, the Court granted Trustee's application to employ Shulman Hodges & Bastian ("SHB") as general counsel.

On June 13, 2017, the Court granted Debtor's motion to vacate discharge, and, on July 11, 2017, the case was converted to Chapter 13.

On August 10, 2017, SHB filed its motion for order allowing and authorizing payment of attorney's fees and expenses to SHB as an administrative expense pursuant to 11 U.S.C. § 503(b)(1). SHB requests \$24,339 in fees and \$1,141.31 in expenses.

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CONT... Efren Diaz Estrada

Chapter 13

DISCUSSION

SHB's motion appears to indicate that it is requesting treatment as an administrative claim pursuant to § 503(b)(1)(A), although its legal argument is vague and somewhat unclear. SHB asserts that its services preserved assets for the benefit of creditors, were a substantial contribution, and that its requested fees are reasonable. SHB's arguments appear to meld a variety of different legal standards without clearly delineating what legal standard it believes to be appropriate.

SHB's reference to and reliance on § 503(b)(1)(A) appears misplaced. The standard for an administrative claim under § 503(b)(1)(A) is that the claim "(1) arose from a transaction with the debtor-in-possession as opposed to the preceding entity (or alternatively, that the claim gave consideration to the debtor-in-possession); and (2) directly and substantially benefitted the estate."

In re DAK Indus., Inc., 66 F.3d 1091, 1094 (9th Cir. 1995) (quoting *In re White Motor Corp.*, 831 F.2d 106, 110 (6th Cir. 1987)). "The purpose of administrative priority status is to encourage third parties to contract with the bankruptcy estate for the benefit of the estate as a whole." *In re Ybarra*, 424 F.3d 1018, 1026 (9th Cir. 2005). *In re Weibel, Inc.* stated:

If compensation cannot be awarded under Section 503(b)(2), then the question is whether it can be awarded under Section 503(b)(1). McCutchen argues that it can. However, such an interpretation of Section 503 renders Section 503(b)(2), as well as Section 327, nugatory. Indeed, the language behind both Sections is remarkably similar. Section 503(b)(2) essentially incorporates the language of Section 330, that reasonable compensation can be allowed for actual, necessary services rendered by the attorney based on the nature, extent and value of such services. Section 503(b)(1) provides for payment, as administrative claim, of the actual necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case.

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CONT... Efren Diaz Estrada

Chapter 13

For an attorney, the test for receiving compensation would appear nearly identical under both Sections. It is reasonable then, to construe Section 503(b)(2), with its specific reference to compensation to professionals under Section 330, as the only part of Section 503(b) under which such professional can receive compensation.

176 B.R. 209, 213 (B.A.P. 9th Cir. 1994). *See also In re Marshall*, 2015 WL 5735220 at *3 (Bankr. C.D. Cal. 2015) (attorney's fees inappropriate under § 503(b)(1)(A)); 4 Collier on Bankruptcy ¶ 503.06[2] (16th ed. 2015) (providing examples of services that are within the scope of § 503(b)(1)(A). Therefore, SHB is not entitled to an administrative award pursuant to § 503(b)(1)(A). And the Ninth Circuit has explicitly stated that until a fee award is made under § 330, an applicant is not entitled to an administrative claim pursuant to § 503(b)(2). *See In re Riverside-Linden Inv. Co.*, 945 F.2d 320, 324 (9th Cir. 1991).

Here, Movant moves under § 503(b)(1), when it first needs to seek approval of compensation under § 330, and then seek an administrative expense under § 503(b)(2). Parties to discuss deeming Movant's request as being made pursuant to § 330.

TENTATIVE RULING

Subject to discussion, the Court is inclined to DENY the motion without prejudice.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Efren Diaz Estrada

Represented By

**United States Bankruptcy Court
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CONT... Efren Diaz Estrada

Chapter 13

W. Derek May

Movant(s):

Lynda T. Bui

Represented By
Lynda T Bui
Ryan D ODea

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:30 PM

6:16-18125 Marc Meisenheimer

Chapter 13

#5.00 Motion to Vacate Dismissal and Set Aside Order Dismissing Debtor's Chapter 13 Case

EH__

Docket 41

Tentative Ruling:

8/31/17

BACKGROUND

On September 9, 2016, Marc Meisenheimer ("Debtor") filed a Chapter 13 voluntary petition. On October 26, 2016, Debtor's Chapter 13 plan was confirmed.

On June 28, 2017, Trustee filed a motion to dismiss for delinquency. On July 12, 2017, Debtor filed his opposition. No appearance was made on behalf of Debtor at the hearing on July 27, 2017, and the case was dismissed.

On August 10, 2017, Debtor filed a motion to vacate and set aside order dismissing Debtor's Chapter 13 case and reinstate the Debtor's Chapter 13 bankruptcy case *nunc pro tunc*. On August 15, 2017, Trustee filed a conditional approval, on the condition that Debtor tender \$804 by the hearing and submit copies of his 2016 tax returns. Additionally, Trustee disagrees with *nunc pro tunc* relief.

DISCUSSION

**United States Bankruptcy Court
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CONT... Marc Meisenheimer

Chapter 13

Debtor asserts that no appearance was made at the hearing on July 27, 2017, because Debtor had cured the delinquency by the hearing and thought that the matter was resolved. The Court finds that the conditions outlined in Trustee's condition approval of Debtor's motion to be reasonable, and, therefore, will vacate the dismissal order pursuant to Fed. R. Bankr. P. Rule 9024, on the grounds of excusable neglect, assuming that Debtor has complied with the applicable provisions.

Regarding Debtor's request that the vacation of the dismissal order be *nunc pro tunc*, however, the Court agrees with the Trustee that such relief is not appropriate. Debtor's motion does not contain legal authorities that directly support the proposition that the reinstatement of a case can, or should, be ordered *nunc pro tunc*. It is also not clear why Debtor has made such a request, although Trustee appears to assume that Debtor wishes to have the automatic stay retroactively imposed.

The general rule is "that the reinstatement of a dismissed bankruptcy case does not retroactively reimpose the automatic stay." *In re Lomagno*, 320 B.R. 473, 479 (B.A.P. 1st Cir. 2005) (collecting cases); *see also In re Nagel*, 245 B.R. 657, 662 (D. Ariz. 1999) ("By 'undoing' the return to the status quo ante through the retroactive application of the stay, the bankruptcy court engaged in a kind of judicial time travel that cannot be reconciled with the law.")

As discussed in *In re Lomagno*, courts have recognized an exception when there is a violation of due process rights. *See generally* 320 B.R. at 480 ("Several courts have concluded that reinstatement of a dismissed bankruptcy case does not affect the validity of a creditor's actions taken during the period the case was dismissed, *unless there was a violation of due process rights.*") (emphasis in original). Here, there is no indication that the situation fits within the exception to the general rule.

TENTATIVE RULING

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CONT... Marc Meisenheimer

Chapter 13

The Court is inclined to GRANT IN PART Debtor's motion, reinstating the case without the requested *nunc pro tunc* relief.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Marc Meisenheimer

Represented By
Lionel E Giron
Kevin Tang

Movant(s):

Marc Meisenheimer

Represented By
Lionel E Giron
Kevin Tang

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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6:16-18182 Douglas Edward Goodman and Anne Louise Goodman

Chapter 13

#6.00 CONT Motion RE: Objection to Claim Number 11 by Claimant Natasha Reynoso and Mark Reynoso
HOLDING DATE

From: 5/4/17, 8/24/17

EH__

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Movant(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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CONT... Douglas Edward Goodman and Anne Louise Goodman

Chapter 13

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Hearing Room 303

12:30 PM

6:13-28594 Jimmy Radu Vianu and Milagros Vianu

Chapter 13

#7.00 CONT Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

From: 8/17/17

EH__

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jimmy Radu Vianu

Represented By
Andrew Nguyen

Joint Debtor(s):

Milagros Vianu

Represented By
Andrew Nguyen

Movant(s):

Milagros Vianu

Represented By
Andrew Nguyen

Jimmy Radu Vianu

Represented By
Andrew Nguyen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, August 31, 2017

Hearing Room 303

12:30 PM

6:15-12168 Leslie A. Larson

Chapter 13

#8.00 Motion to Vacate Order of Dismissal and Motion for Order to Reinstate Chapter 13 Case

EH__

Docket 57

Tentative Ruling:

8/31/17

BACKGROUND

On March 6, 2015, Leslie Larson ("Debtor") filed a Chapter 13 voluntary petition. On May 11, 2015, Debtor's Chapter 13 plan was confirmed.

On July 10, 2017, Trustee filed a motion to dismiss for failure to submit tax returns/refunds. That same day, Debtor filed her opposition, indicating that Debtor had mailed her tax returns to Trustee.

On July 24, 2017, a hearing was held on Trustee's motion to dismiss. No appearance was made on behalf of Debtor and the case was dismissed. Debtor's counsel indicates that he had two clients with the last name "Larson" with hearings on motions to dismiss for failure to submit tax returns/refunds. Debtor's counsel additionally asserts that when the hearing for his other client was called, and Trustee withdrew the motion, he erroneously believed that the motion to dismiss for Debtor had been withdrawn.

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CONT... Leslie A. Larson

Chapter 13

On July 27, 2017, Debtor filed a motion to vacate dismissal. On July 31, 2017, Trustee filed comments indicating conditional approval, on the condition that Debtor make payment to become current with plan payments (\$2,169).

DISCUSSION

Fed. R. Bankr. P. Rule 9024, incorporating Fed. R. Civ. P. Rule 60(b)(1), provides for relief from an order for, among other things, "mistake, inadvertence, surprise, or excusable neglect." Debtor's counsel states that it is his recollection that Trustee stated he would withdraw the motion to dismiss on the date of the hearing.

Given the conditional approval of the Trustee and the evidence submitted by Debtor, the Court finds that the requested relief is proper assuming that the condition has been satisfied.

TENTATIVE RULING

The Court is inclined to GRANT the motion in accordance with the terms in Trustee's comments.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Leslie A. Larson

Represented By
Carey C Pickford

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CONT... Leslie A. Larson

Chapter 13

Movant(s):

Leslie A. Larson

Represented By
Carey C Pickford
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:16-19962 Fonda Cormier

Chapter 7

#9.00 CONT Motion to Vacate Conversion of Case From Chapter 13 to Chapter 7

From: 8/3/17

EH__

Docket 42

Tentative Ruling:

8/3/17

BACKGROUND

On November 9, 2016, Fonda Cormier ("Debtor") filed a Chapter 13 voluntary petition. On December 28, 2016, Debtor's Chapter 13 plan was confirmed, and was modified twice subsequently.

On June 30, 2017, Debtor filed a notice of conversion to Chapter 7, and the case was converted approximately two hours and fifteen minutes later. Approximately one hour and thirty minutes later, Debtor filed a motion to vacate the conversion order. The motion was filed on negative notice. On July 20, 2017, the Court set the matter for hearing.

Debtor's argument is, essentially, that Debtor changed its mind and no longer wants to be in Chapter 7. Specifically, Debtor states that after it filed the notice of conversion it had discussions with Trinity Financial, a lienholder on Debtor's principal residence, and learned that Trinity Financial would likely file a motion for relief from stay if the case were converted to Chapter 7.

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CONT... Fonda Cormier

Chapter 7

DISCUSSION

As a preliminary matter, the proof of service included in Debtor's motion is not signed, and Debtor has not served all parties in interest pursuant to Local Rule 1017.

Additionally, Debtor's motion contains no legal standard or analysis. Relief from a judgment or order is governed by Fed. R. Civ. P. Rule 60, incorporated into bankruptcy proceedings by Fed. R. Bankr. P. Rule 9024. Debtor has not provided any argument relating to that standard.

Furthermore, the declaration of Debtor's attorney appears to misrepresent the factual situation. First, the reasons for Debtor converting to Chapter 7 are not given. The primary argument presented by Debtor in support of this motion is that counsel learned, after filing a notice of conversion and having further discussions with Trinity Financial, that Trinity Financial would likely file a motion for relief from stay if the case was converted to Chapter 7. Trinity Financial had, however, in fact filed a motion for relief from stay on May 9, 2017, and an order approving the stipulation of the parties was entered on June 27, 2017. Section 10 of that order states: "This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code." The parties chose not to include language that would provide for relief from stay upon conversion of the case. Therefore, it is unclear how the conversion of the case could have any effect on the automatic stay as it relates to Trinity Financial.

As an aside, the Court notes that Debtor is ineligible for a Chapter 7 discharge under § 727(a)(8) by virtue of a Chapter 7 discharge on September 25, 2009.

TENTATIVE RULING

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CONT... Fonda Cormier

Chapter 7

Given the legal and factual deficiencies of the motion, in addition to the motion's improper service, the Court will DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Fonda Cormier

Represented By
Manfred Schroer

Movant(s):

Fonda Cormier

Represented By
Manfred Schroer

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

12:30 PM

6:17-10660 Xiomara Swiatkowski

Chapter 13

#10.00 Motion RE: Objection to Court Claim Number 2, Trustee's Claim Number 5 by Claimant Peter Swiatkowski

EH__

Docket 28

Tentative Ruling:

8/31/17

Background:

On January 27, 2017, Xiomara Swiatkowski filed a Chapter 13 voluntary petition. On March 15, 2017, Debtor's Chapter 13 plan was confirmed.

On March 8, 2017, Peter Swiatkowski filed a claim in the amount of \$118,291, of which \$61,741 was classified as secured ("Claim 2"). On July 24, 2017, Debtor filed an objection to Claim 2. The Court notes that the claim objection contains no proof of service.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy

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CONT... Xiomara Swiatkowski

Chapter 13

Procedure ("FRBP") 3001(f). *See Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

First of all, Debtor's claim of objection does not appear to have been properly served. Additionally, Debtor's claim objections contains no legal argument, but instead simply states that it is based on various exhibits, exhibits which are not properly authenticated. Therefore, Debtor has failed to submit the required evidence, pursuant to Local Rule 3007, in order for the Court to find that Debtor has satisfied its burden of proof under the legal standards recited above.

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CONT... Xiomara Swiatkowski

Chapter 13

Tentative Ruling

The Court is inclined to OVERRULE the objection.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Xiomara Swiatkowski

Represented By
Robert W Ripley

Movant(s):

Xiomara Swiatkowski

Represented By
Robert W Ripley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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12:30 PM

6:17-10681 Kisha Eugena Stegall-Hill

Chapter 13

#11.00 Motion to vacate dismissal

EH__

Docket 58

Tentative Ruling:

8/31/17

BACKGROUND

On January 27, 2017, Kisha Stegall-Hill ("Debtor") filed a Chapter 13 voluntary petition. On June 13, 2017, Debtor's Chapter 13 plan was confirmed.

On July 5, 2017, Trustee filed a motion to dismiss for failure to submit tax returns or refunds. On July 11, 2017, Debtor filed her opposition. According to Debtor, on July 20, 2017, Debtor's counsel sent Trustee the tax returns and indicated that the IRS had intercepted any expected refund.

On July 24, 2017, a hearing was held on Trustee's motion to dismiss. No appearance was made on behalf of Debtor and the case was dismissed.

On July 28, 2017, Debtor filed a motion to vacate dismissal. On July 31, 2017, Trustee filed comments indicating conditional approval, on the condition that Debtor make payment to become current with plan payments (\$3,135.18) and either tender the tax returns, totaling \$6,103, or provide evidence that such returns were intercepted.

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CONT... Kisha Eugena Stegall-Hill

Chapter 13

DISCUSSION

Fed. R. Bankr. P. Rule 9024, incorporating Fed. R. Civ. P. Rule 60(b)(1), provides for relief from an order for, among other things, "mistake, inadvertence, surprise, or excusable neglect." Debtor's counsel states that it is his recollection that Trustee stated he would withdraw the motion to dismiss on the date of the hearing.

Given the conditional approval of the Trustee and the evidence submitted by Debtor, the Court finds that the requested relief is proper assuming that the conditions have been satisfied.

TENTATIVE RULING

The Court is inclined to GRANT the motion in accordance with the terms in Trustee's comments.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Kisha Eugena Stegall-Hill

Represented By
Christopher J Langley

Movant(s):

Kisha Eugena Stegall-Hill

Represented By
Christopher J Langley

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Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-10702 Miriam Louise Preisendanz

Chapter 13

#12.00 Motion for Order Disallowing Claim Filed by American Express Bank FSB [Claim #10]

EH__

Docket 37

Tentative Ruling:

8/31/17

Background:

On January 28, 2017, Miriam Preisendanz ("Debtor") filed a Chapter 13 voluntary petition. Debtor's Chapter 13 plan was confirmed on March 15, 2017.

On May 16, 2017, American Express Bank, FSB ("American Express") filed an unsecured claim in the amount of \$11,316.57 ("Claim 10"). On July 22, 2017, Debtor filed an objection to Claim 10. On August 16, 2017, American Express filed a response.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy

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CONT... Miriam Louise Preisendanz

Chapter 13

Procedure ("FRBP") 3001(f). *See Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Debtors argue that the statute of limitations is four years for Creditor's claim and that Creditor's claim is therefore barred. Cal. Code Civ. P. § 337(2) provides for a statute of limitations of four years for:

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An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgement of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

Cal. Code Civ. P. § 337(1) provides that the statute of limitations is also four years for claims based upon a contract.

American Express's response is that the Cash Rebate Cardmember Agreement includes a choice of law provision that identifies Utah as the governing law. American Express further asserts that the statute of limitations for its claim is six years under Utah law, and that, therefore, its claim is not barred. The Cash Rebate Cardmember Agreement states, under the section applicable law:

This Agreement and your Account, and all questions about their legality, enforceability and interpretation, are governed by the laws of the State of Utah (without regard to internal principles of conflicts of law), and by applicable federal law. We are located in Utah, hold your Account in Utah, and entered into this Agreement with you in Utah.

As is noted by American Express, the Ninth Circuit, relying on the Restatement (Second) of Conflict of Laws § 142, previously stated:

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The application of § 142 compels the conclusion that California's shorter statute of limitations does not apply here, because the case presents the sort of "exceptional circumstances" under which the 1988 version of the Second Restatement looks past the law of the forum, and applies a longer foreign limitations period. The Restatement, to be sure, does not provide an exhaustive or technical definition of an exceptional circumstance. Nevertheless, the comment to the 1988 version of § 142 makes clear that the present case comes within that category. Indeed, this case is on all fours with the Restatement's *only* example of what would constitute such a "special," "unjust" circumstance: "[W]hen through no fault of the plaintiff an alternative forum is not available as, for example, where jurisdiction could not be obtained over the defendant in any [other] state . . ."

In re Sterba, 852 F.3d 1175, 1180 (9th Cir. 2017). In the absence of any argument to the contrary, the Court finds that Utah law provides the applicable statute of limitations.

While American Express argues that the statute of limitations in Utah for credit card debt is six years, Utah's statutes are unclear. The Court of Appeals of Utah has recently stated:

As both parties agree, the question of which limitations period applies to actions on credit card accounts is an issue of first impression in Utah. Stocks argues that the four-year period applicable to "open store account[s] for [the purchase of] any good, wares, or merchandise" and to "open account[s] for work, labor or services rendered, or materials furnished," *see* Utah Code Ann. § 78B-2-307, is the correct one; Asset Acceptance contends that it should be the six-year period applicable to "any contract, obligation, or liability founded upon an instrument in writing," *see id.* § 78B-2-309. In other jurisdictions where a similar issue has been addressed, the results have been mixed and often involve statutory language that differs from our own in ways that may or

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may not be significant. And the question presented here is an important one that deserves attention, whether judicial or legislative, given the universality of credit cards in our society and the number of collection cases involving credit card debt that make their way into our courts. But precisely because the issue is important and may have widespread impact, we decline to attempt to resolve an issue of first impression in a case with the sort of procedural deficits this one contains.

Asset Acceptance LLC v. Stocks, 376 P.3d 322, 327 (Ct. App. Utah 2016) (footnotes omitted). Utah Code Ann. § 78B-2-307(1) states:

An action may be brought within four years:

(1) after the last charge is made or the last payment is received:

(a) upon a contract, obligation, or liability not founded upon an instrument in writing

(b) on an open store account for any goods, wares, or merchandise; or

(c) on an open account of work, labor or services rendered, or materials furnished.

And Utah Code. Ann. § 78B-2-309(2) states:

An action may be brought within six years:

(2) upon any contract, obligation, or liability founded upon an instrument in writing, except those mentioning in Section 78B-2-

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In equivocating upon the statute of limitations, the Court of Appeals of Utah left a footnote identifying several states that had addressed the situation. *Stocks*, 376 P.3d 322, 327 n.3. The split identified by the Court of Appeals of Utah appears to center on whether the reviewing court believed that a credit card agreement should be interpreted as a written contract or an oral contract; i.e. whether a credit card agreement was sufficient to satisfy the formalities of contract formation. *Compare, e.g., Portfolio Acquisitions LLC v. Feltman*, 391 Ill. App. 3d. 642, 651-52 (App. Ct. Ill. 2009) ("Accordingly, the contract at issue is considered to be an oral contract for purpose of the statute of limitations and the five-year period of section 13-205 applies.") with *Hill v. Am. Express*, 289 Ga. App. 576, 577-78 (Ct. App. Ga. 2008) (credit card agreement is written contract).

Despite not alerting the Court to the unsettled nature of the question in Utah, American Express appears to have anticipated this analysis, including in its opposition a brief argument that Utah law recognizes a credit card agreement as a written contract. *See In re Cluff*, 313 B.R. 323, 334 (Bankr. D. Utah. 2004) ("Under the test this Court has articulated, these credit card debts are based on writing."). This argument is unconvincing, primarily because *In re Cluff* was not interpreting Utah law, but, rather, the Federal Rules of Bankruptcy Procedure.¹ *Id.*

The Court notes, however, that Utah Code Ann. § 25-5-4(2)(e) states:

(e) A credit agreement is binding and enforceable without any signature by the party to be charged if:

(i) the debtor is provided with a written copy of the terms of the agreement;

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(ii) the agreement provides that any use of the credit offered shall constitute acceptance of those terms;

(iii) after the debtor receives the agreement, the debtor, or a person authorized by the debtor, requests funds pursuant to the credit agreement or otherwise uses the credit offered.

Here, the agreement clearly satisfied the second requirement. The Court lacks an evidentiary record to determine whether the debtor was provided with a written copy of the agreement and requested funds after receiving the agreement. If the requirements of Utah Code Ann. § 25-5-4(2)(e) were satisfied, the Court concludes that a Utah court would find the credit agreement enforceable, per the statute. *See MBNA Am. Bank, N.A. v. Goodman*, 140 P.3d 589, 592 (Ct. App. Utah 2006). If the credit agreement is enforceable, then the claim of American Express would appear to be founded upon an instrument in writing, and the six year statute of limitations would apply.

Exhibit A provided by American Express, however, indicates that on April 18, 2011, there was a \$15 agency remittance, which is referred to by American Express as a "payment." It is unclear if this is in fact a payment. If it is not a payment, to adopt American Express's argument that this "agency remittance" tolls the statute of limitations would allow a creditor the means to unilaterally toll the statute of limitations indefinitely.

Furthermore, the Court notes that Exhibit A to American Express's opposition is not the same form as is included in the proof of claim. Claim 10 shows activity for 2012, indicates that the last transaction was in June 2008, that the account was charged off in January 2009, and that the last payment was made in April 2011.

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CONT... Miriam Louise Preisendanz

Chapter 13

Parties to address the nature of the April 18, 2011, "agency remittance."

Tentative Ruling

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Miriam Louise Preisendanz

Represented By
Danny K Agai

Movant(s):

Miriam Louise Preisendanz

Represented By
Danny K Agai

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-11075 Ryan Christopher Murphy and Theresa Marie Murphy

Chapter 13

#13.00 Application for Compensation for Motion to Disallow Claim (Fee Application #1) with Proof of Service for Jenny L Doling, Debtor's Attorney, Period: 5/16/2017 to 6/28/2017, Fee: \$950.00, Expenses: \$0.

EH__

Docket 23

Tentative Ruling:

8/31/17

BACKGROUND

On February 13, 2017, Ryan & Theresa Murphy ("Debtor") filed a Chapter 13 voluntary petition. On April 6, 2017, Debtors' Chapter 13 plan was confirmed.

On March 21, 2017, the IRS filed a priority claim in the amount of \$4,663 ("Claim 3"). On May 16, 2017, Debtors filed an objection to Claim 3. On June 22, 2017, approximately one hour before the hearing, and after the Court had published a tentative ruling indicating that it was inclined to overrule the objection for lack of evidence, Debtors withdrew the objection.

On June 28, 2017, Debtors' counsel, Jenny Doling ("Counsel"), filed an application for compensation, requesting \$950 for the preparation of the claim objection. The next day, Trustee filed comments objecting to the requested compensation, and asserting that the services rendered were of no benefit to the estate. On July 31, 2017, Doling filed a reply and set the matter for hearing. Doling's reply states that "the work was still completed at the request and representation of the Debtors and Counsel should be compensated for such work." In the alternative, Doling requests the Court to enter an

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CONT... Ryan Christopher Murphy and Theresa Marie Murphy
order, granting the fees to be paid outside the plan.

Chapter 13

DISCUSSION

The language of 11 U.S.C. § 329(b) instructs the court to reduce requested compensation if such compensation exceeds the reasonable value of the provided services. *See also Hale v. U.S. Trustee*, 509 F.3d 1139, 1147 (9th Cir. 2007) ("Under § 329(b), a bankruptcy court may examine the reasonableness of a debtor's attorney fees and, '[i]f such compensation exceeds the reasonable value of any such services, the court may cancel agreement, or order the return of any such payment, to the extent excessive.") "In making the 'reasonable value' determination, the bankruptcy court is to be guided by section 330 of the Bankruptcy Code, which sets forth a number of factors that Congress deemed relevant to an assessment of the value of professional services." *Matter of Geraci*, 138 F.3d 314, 318 (7th Cir. 1998).

Here, the Court agrees with Trustee that the services provided by Counsel did not have ANY benefit to the estate. The claim objection, as outlined by the Court previously, did not contain evidence suggesting that the IRS's claim was inaccurate. Further, there is no evidence as to the basis for the withdrawal of the claim objection; i.e., that Debtor called Counsel the day of the hearing and stated the tax returns now needed to be amended. As such, the claim objection did not satisfy the evidentiary standard of Local Rule 3007. It is not that the filing of an objection to Claim 3 could not have had any benefit to the estate – rather the claim objection that was filed was inadequate on its face.

Counsel's request that the Court enter an order granting the fees, but instructing that the fees be paid outside the plan, lacks legal foundation. Whether the fees are to be paid directly by Debtor or through the plan does not affect the legal standard applied by the Court. Instead, Fed. R. Bankr. P. Rule 2017(b) suggests that the two situations are to be analyzed the same. Therefore, the Court declines to grant this alternative request.

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CONT... Ryan Christopher Murphy and Theresa Marie Murphy

Chapter 13

TENTATIVE RULING

The Court is inclined to DENY the requested fees.

APPEARANCES REQUIRED, or Counsel may not appear and be deemed to submit to the tentative.

Party Information

Debtor(s):

Ryan Christopher Murphy

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Theresa Marie Murphy

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Theresa Marie Murphy

Represented By
Jenny L Doling
Summer M Shaw

Ryan Christopher Murphy

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-11456 Jose Alberto Lara-Pena and Yanisleidy Sanchez-Quinonez Chapter 13

#14.00 Motion for Order Disallowing Claim Number 7 of Pinnacle Credit Services, LLC

EH__

Docket 47

Tentative Ruling:

8/31/17

Background:

On February 27, 2017, Jose Lara-Pena & Yanisleidy Sanchez-Quinonez ("Debtors") filed a Chapter 13 voluntary petition. On May 23, 2017, Debtors' Chapter 13 plan was confirmed.

On July 5, 2017, Pinnacle Credit Services, LLC filed an unsecured proof of claim in the amount of \$969.99 ("Claim 7"). On July 29, 2017, Debtors filed an objection to Claim 7.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *See Lundell v. Anchor Constr. Specialists, Inc.*, 223

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CONT... Jose Alberto Lara-Pena and Yanisleidy Sanchez-Quinonez Chapter 13

F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Debtors argue that the statute of limitations is four years for Creditor's claim and that Creditor's claim is therefore barred. Cal. Code Civ. P. § 337(2) provides for a statute of limitations of four years for:

An action to recover (1) upon a book account whether consisting of one or

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CONT...

Jose Alberto Lara-Pena and Yanisleidy Sanchez-Quinonez

Chapter 13

more entries; (2) upon an account stated based upon an account in writing, but the acknowledgement of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

Cal. Code Civ. P. § 337(1) provides that the statute of limitations is also four years for claims based upon a contract.

The Court has reviewed Creditor's proof of claim and it appears that the applicable statute of limitations is four years pursuant to Cal. Code Civ. P. § 337. It additionally appears that Debtors have not made a payment on the claim in more than six years, and, therefore, the statute of limitations has expired.

Tentative Ruling

The Court is inclined to SUSTAIN the objection.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Jose Alberto Lara-Pena

Represented By
Luis G Torres

Joint Debtor(s):

Yanisleidy Sanchez-Quinonez

Represented By

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**CONT... Jose Alberto Lara-Pena and Yanisleidy Sanchez-Quinonez
Luis G Torres**

Chapter 13

Movant(s):

Yanisleidy Sanchez-Quinonez

Represented By
Luis G Torres

Jose Alberto Lara-Pena

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-13984 Harris Miller

Chapter 13

#15.00 CONT Confirmation of Chapter 13 Plan

From: 6/22/17, 7/27/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harris Miller

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14790 Ernesto Ayon Lopez and Dolores Millan Sanchez

Chapter 13

#16.00 CONT Confirmation of Chapter 13 Plan

From: 7/13/17, 7/27/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ernesto Ayon Lopez

Represented By
James Geoffrey Beirne

Joint Debtor(s):

Dolores Millan Sanchez

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:17-15586 Jeannine Michon Norman

Chapter 13

#17.00 CONT Confirmation of Chapter 13 Plan

From: 8/17/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeannine Michon Norman

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:17-15729 Franklin R. Meza

Chapter 13

#18.00 CONT Confirmation of Chapter 13 Plan

From: 8/17/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Franklin R. Meza

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15928 Maria A Holguin

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/4/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria A Holguin

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-15935 Kath Boonklun

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/4/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kath Boonklun

Represented By
Charles Martin

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15954 Cynthia Ann Sawyer

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/4/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cynthia Ann Sawyer

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-15959 Maria Artemisa Griffith

Chapter 13

#22.00 Motion to Avoid JUNIOR LIEN with Specialized Loan Servicing, LLC, and/or Deutsche Bank National Trust Company, as Indenture Trustee, on behalf of the holders of the Terwin Mortgage Trust 2006-10SL, Asset-backed Securities, Series 2006-10SL

Also #23

EH__

Docket 15

Tentative Ruling:

Hearing Date: 8/31/17

Summary of the Motion:

Notice: Proper

Opposition: None

Address: 39588 Meadow View Circle, Temecula, CA 92592

First trust deed: \$ 597,892.62 (Select Portfolio Servicing, Inc.) (mortgage statement dated 6/15/17)

Second trust deed (to be avoided): \$ 105,916.40 (Specialized Loan Servicing, LLC) (mortgage statement dated 1/18/13)

Fair market value (per appraisal & appraiser declaration): \$ 460,000

TENTATIVE

The Court having reviewed the motion, finding notice and service to be proper, the Court is inclined to GRANT the motion, avoiding the junior lien of Specialized Loan Servicing, LLC, upon receipt of a Chapter 13 discharge.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

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CONT... Maria Artemisa Griffith

Chapter 13

Debtor(s):

Maria Artemisa Griffith

Represented By
Carey C Pickford

Movant(s):

Maria Artemisa Griffith

Represented By
Carey C Pickford
Carey C Pickford
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-15959 Maria Artemisa Griffith

Chapter 13

#23.00 Confirmation of Chapter 13 Plan

Also #22

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Artemisa Griffith

Represented By
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15965 Jeffrey P Hamblin

Chapter 13

#24.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey P Hamblin

Represented By
Solomon A Cheifer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15967 Paul Hiram Jones

Chapter 13

#25.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paul Hiram Jones

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15978 Conchita C Ang

Chapter 13

#26.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Conchita C Ang

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-15996 Robert R McDonald

Chapter 13

#27.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert R McDonald

Represented By
Stephen L Burton

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16000 Julie Gamido

Chapter 13

#28.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julie Gamido

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-16024 Stacy N Reagor

Chapter 13

#29.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stacy N Reagor

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16037 Nadia M. Lipscomb

Chapter 13

#30.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nadia M. Lipscomb

Represented By
James D. Hornbuckle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16041 Daniel Garcia and Maria Garcia

Chapter 13

#31.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Garcia

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Maria Garcia

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16052 Juan Guerrero

Chapter 13

#32.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Guerrero

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16073 Karsten Sanders

Chapter 13

#33.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Karsten Sanders

Represented By
William Radcliffe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16113 Esther Martinez

Chapter 13

#34.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/8/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Esther Martinez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-16114 Allan Omar Ramos

Chapter 13

#35.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allan Omar Ramos

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16133 Maria Susana Snavely

Chapter 13

#36.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 8/17/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Susana Snavely

Represented By
Michael Salanick

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16134 Gerardo Garibay

Chapter 13

#37.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerardo Garibay

Represented By
Alberto Carranza

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16140 Abel Gonzalez

Chapter 13

#38.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Abel Gonzalez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16142 Jose Guadalupe Rodriguez

Chapter 13

#39.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Guadalupe Rodriguez Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

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6:17-16164 William Richard Newborg and Serina Rae Newborg

Chapter 13

#40.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Richard Newborg

Represented By
Ramiro Flores Munoz

Joint Debtor(s):

Serina Rae Newborg

Represented By
Ramiro Flores Munoz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-16192 Catherine Lucille Laff

Chapter 13

#41.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Catherine Lucille Laff

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:30 PM

6:17-16240 Jessie Romero, Jr

Chapter 13

#42.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jessie Romero Jr

Represented By
Bruno Flores

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:30 PM

6:17-16249 Ruben Quintero Palafox, Jr.

Chapter 13

#43.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ruben Quintero Palafox Jr.

Represented By
Yoon O Ham

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:30 PM

6:17-16267 Samuel T Saavedra and Suzanne M Saavedra

Chapter 13

#44.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Samuel T Saavedra

Represented By
Michael R Totaro

Joint Debtor(s):

Suzanne M Saavedra

Represented By
Michael R Totaro

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:30 PM

6:17-16278 Francisco Lopez

Chapter 13

#45.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/15/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco Lopez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:30 PM

6:17-16295 Coe Lamoureux and Julie Lamoureux

Chapter 13

#46.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Coe Lamoureux

Represented By
W. Derek May

Joint Debtor(s):

Julie Lamoureux

Represented By
W. Derek May

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:30 PM

6:17-16669 Kalenga Patrick Munongo and Janelle Nicole Munongo

Chapter 13

#47.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate ALL PERSONAL AND REAL PROPERTY

MOVANT: KALENGA PATRICK MUNONGO AND JANELLE NICOLE MUNONGO

EH__

Docket 14

Tentative Ruling:

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Kalenga Patrick Munongo

Represented By
Paul Y Lee

Joint Debtor(s):

Janelle Nicole Munongo

Represented By
Paul Y Lee

Movant(s):

Janelle Nicole Munongo

Represented By
Paul Y Lee
Paul Y Lee

Kalenga Patrick Munongo

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

Rod (MJ) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:30 PM

CONT... Kalenga Patrick Munongo and Janelle Nicole Munongo

Chapter 13

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:13-10251 Brandon Kent Blevins and Teresa Taylor Blevins

Chapter 13

#48.00 Trustee's Motion to Dismiss Case

EH__

Docket 211

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brandon Kent Blevins

Represented By
Raj T Wadhvani

Joint Debtor(s):

Teresa Taylor Blevins

Represented By
Raj T Wadhvani

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:13-11109 Willia Roberta Burch-Jones

Chapter 13

#49.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 138

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/22/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Willia Roberta Burch-Jones

Represented By
Steven A Alpert

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:13-18728 Jeanette Johnson

Chapter 13

#50.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 8/17/17

EH__

Docket 63

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeanette Johnson

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:13-21894 Francisco Javier Medina and Maria Guadalupe Medina

Chapter 13

#51.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 134

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco Javier Medina

Represented By
Tamar Terzian

Joint Debtor(s):

Maria Guadalupe Medina

Represented By
Tamar Terzian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:13-23032 David R. Roberts and Crystal A Roberts

Chapter 13

#52.00 CONT Trustee's Motion to Dismiss Case

From: 8/17/17

EH__

Docket 63

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David R. Roberts

Represented By
Javier H Castillo

Joint Debtor(s):

Crystal A Roberts

Represented By
Javier H Castillo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:13-27788 Porfirio Macias Castro and Maria Lopez Castro

Chapter 7

#53.00 Trustee's Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 52

***** VACATED *** REASON: CASE CONVERTED TO CHAPTER 7 ON
8/16/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Porfirio Macias Castro

Represented By
Leonard J Cravens

Joint Debtor(s):

Maria Lopez Castro

Represented By
Leonard J Cravens

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:14-12975 Deborah Lynn Gordon

Chapter 13

#54.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 48

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Lynn Gordon

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:14-14265 Ricardo Pimentel and Maria Pimentel

Chapter 13

#55.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 50

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricardo Pimentel

Represented By
Tamar Terzian

Joint Debtor(s):

Maria Pimentel

Represented By
Tamar Terzian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:14-16884 Robert M Lopez and Ashley Lopez

Chapter 13

#56.00 Trustee's Motion to Dismiss Case

EH__

Docket 52

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/21/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert M Lopez

Represented By
Anthony Wilaras

Joint Debtor(s):

Ashley Lopez

Represented By
Anthony Wilaras

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:14-24213 Rula Nino

Chapter 13

#57.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 86

***** VACATED *** REASON: WITHDRAW OF MOTION FLD 8/30/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rula Nino

Represented By
Devin Sawdayi

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:15-10488 Jose L Rangel and Rosa M Rangel

Chapter 13

#58.00 Trustee's Motion to Dismiss Case

EH__

Docket 90

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/10/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose L Rangel

Represented By
Lisa H Robinson
John F Brady

Joint Debtor(s):

Rosa M Rangel

Represented By
Lisa H Robinson
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:15-10760 Kevin S. Klose and Diana K. Klose

Chapter 13

#59.00 CONT Trustee's Motion to Dismiss Case (Delinquency)

From: 8/17/17

EH__

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kevin S. Klose

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Diana K. Klose

Represented By
Patricia M Ashcraft

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:15-12404 Anthony E Turkson

Chapter 13

#60.00 CONT Trustee's Motion to Dismiss Case

From: 8/17/17

EH__

Docket 74

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anthony E Turkson

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:15-13830 Ramon Urrutia

Chapter 13

#61.00 Trustee's Motion to Dismiss Case

EH__

Docket 41

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/7/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ramon Urrutia

Represented By
C Scott Rudibaugh

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:15-14501 Vonetta M Mays

Chapter 13

#62.00 CONT Trustee's Motion to Dismiss Case

From: 8/3/17, 8/17/17

EH__

Docket 145

***** VACATED *** REASON: WITHDRAW OF MOTION FILED 8/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vonetta M Mays

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:15-16367 John Stephen Puddy, Jr.

Chapter 13

#63.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 30

*** VACATED *** REASON: VOLUNTARY DISMISSAL FILED
8/29/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Stephen Puddy Jr.

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:15-19152 Carol Elizabeth Tenney

Chapter 13

#64.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 48

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carol Elizabeth Tenney

Represented By
David Lozano

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:15-22392 Donald Leroy Woodruff

Chapter 13

#65.00 Trustee's Motion to Dismiss Case

EH__

Docket 93

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/22/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald Leroy Woodruff

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:16-10369 Melvin T. Marks and Maria S Peponas

Chapter 13

#66.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 49

***** VACATED *** REASON: WITHDRAWAL OF MOTION FLD
8/30/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Melvin T. Marks

Represented By
James D. Hornbuckle

Joint Debtor(s):

Maria S Peponas

Represented By
James D. Hornbuckle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:16-10451 Shahla Salamat

Chapter 13

#67.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 60

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shahla Salamat

Represented By
Amid Bahadori

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:16-11794 ROBERT A HAGUE and DIANNE L HAGUE

Chapter 13

#68.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 69

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ROBERT A HAGUE

Represented By
Manfred Schroer

Joint Debtor(s):

DIANNE L HAGUE

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:16-16263 Tanyua A Gates-Holmes

Chapter 13

#69.00 Trustee's Motion to Dismiss Case

EH__

Docket 42

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tanyua A Gates-Holmes

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:16-16523 Zoraida Molina

Chapter 13

#70.00 Trustee's Motion to Dismiss Case

EH__

Docket 30

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Zoraida Molina

Represented By
Samer A Nahas

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:16-17215 Carmen Saucedo

Chapter 13

#71.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 36

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carmen Saucedo

Represented By
Michael Smith
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:16-18621 John Wesley Wilson, Jr. and Michelle Janet Wilson

Chapter 13

#72.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 8/17/17

EH__

Docket 38

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/22/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Wesley Wilson Jr.

Represented By
Julie J Villalobos

Joint Debtor(s):

Michelle Janet Wilson

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:16-18934 Aaron M. Flake and Jeanie M. Flake

Chapter 13

#73.00 CONT Trustee's Motion to Dismiss Case

From: 7/27/17

EH__

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Aaron M. Flake

Represented By
Amanda G Billyard
Andy C Warshaw

Joint Debtor(s):

Jeanie M. Flake

Represented By
Amanda G Billyard
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:16-19396 Pamela Lynn King

Chapter 13

#74.00 CONT Trustee's Motion to Dismiss Case

From: 8/3/17, 8/17/17

EH__

Docket 22

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pamela Lynn King

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:16-19656 Jerome D Williams

Chapter 13

#75.00 Trustee's Motion to Dismiss Case

EH__

Docket 48

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jerome D Williams

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:16-19783 Melanie Lourdes Davis

Chapter 13

#76.00 Trustee's Motion to Dismiss Case

EH__

Docket 45

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/24/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Melanie Lourdes Davis

Represented By
Gary S Saunders

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:16-20329 Gabriel Cruz

Chapter 13

#77.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gabriel Cruz

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:17-10980 Jose Liborio Avila

Chapter 13

#78.00 Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

EH__

Docket 34

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Liborio Avila

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, August 31, 2017

Hearing Room 303

12:31 PM

6:17-10981 Sandra Lorena Parra

Chapter 13

#79.00 Trustee's Motion to Dismiss Case

EH__

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sandra Lorena Parra

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 05, 2017

Hearing Room 303

10:00 AM

6:17-15928 Maria A Holguin

Chapter 13

#1.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Re 44745 SAN LUIS REY LA, PALM DESERT, CA 92260

MOVANT: U.S. BANK NATIONAL ASSOCIATION

EH__

Docket 10

***** VACATED *** REASON: CASE DISMISSED 8/4/17**

Party Information

Debtor(s):

Maria A Holguin Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, September 11, 2017

Hearing Room 303

1:00 PM

6:12-37346 Carmen Elisabeth Barrios

Chapter 7

Adv#: 6:13-01111 Vega v. Barrios

#1.00 Order and Application for Appearance and Examination

EH__

Docket 35

Party Information

Debtor(s):

Carmen Elisabeth Barrios

Represented By
David H Chung

Defendant(s):

Carmen Elisabeth Barrios

Represented By
Andrew Edward Smyth

Plaintiff(s):

Crystal Vega

Pro Se

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:12-33455 Sergio Reyes and Maria De Los Angeles Reyes

Chapter 13

#1.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 600 N. Hollow Ave., West Covina, CA 91790-1549

MOVANT: WELLS FARGO BANK N.A.

From: 8/1/17

EH__

Docket 51

***** VACATED *** REASON: ORDER ENTERED 8/24/17**

Tentative Ruling:

08/01/2017

Service: Proper

Opposition: None

GRANT relief from the stay under § 362(d)(1) based on Debtor's failure to make required post-petition payments. GRANT waiver of 4001(a)(3) stay. GRANT relief under ¶2, ¶3, and ¶12. Relief DENIED under ¶13 as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Sergio Reyes

Represented By
Patricia A Mireles

Joint Debtor(s):

Maria De Los Angeles Reyes

Represented By
Patricia A Mireles

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

CONT... Sergio Reyes and Maria De Los Angeles Reyes

Chapter 13

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:12-34576 William Raymond Gayler and Donna Nan Ling Gayler

Chapter 13

#2.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 6312 Cedar Creek Road, Corona Area, CA 92880

MOVANT: HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR DEUTSCHE ALT-B SECURITIES, MORTGAGE LOAN TRUST, SERIES 2006-AB2

From: 8/1/17

EH__

Docket 94

***** VACATED *** REASON: ORDER ENTERED 8/18/17**

Tentative Ruling:

August 1, 2017
Service: Proper
Opposition: Yes

Subject to adequate protection discussions, the Court is inclined to GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay. Request under § 13 is DENIED as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

William Raymond Gayler

Represented By
Norma Duenas

Joint Debtor(s):

Donna Nan Ling Gayler

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

CONT... William Raymond Gayler and Donna Nan Ling Gayler

Chapter 13

Movant(s):

HSBC Bank USA, National

Represented By
Ryan P Spitalnick
April Harriott
Seth Greenhill
Sean C Ferry

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:14-11369 Robert Wayne Cook, Sr. and Kelly Danielle Cook

Chapter 13

#3.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 4990 Padre Ave, Rancho Cucamonga, CA

MOVANT: WELLS FARGO BANK NA

From: 8/1/17

EH__

Docket 114

Tentative Ruling:

08/01/2017

Service: Proper

Opposition: Yes

Movant has established sufficient grounds to support relief from stay under § 362(d) (1) based on Debtor's failure to make required post-petition payments. Debtor alleges that more payments have been made to the Movant than the Motion accounts for and that some payments have been misapplied by the Movant, but provides no specificity or detail to support his assertions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Robert Wayne Cook Sr.

Represented By
Steven A Alpert

Joint Debtor(s):

Kelly Danielle Cook

Represented By
Steven A Alpert

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

CONT... Robert Wayne Cook, Sr. and Kelly Danielle Cook

Chapter 13

Movant(s):

Wells Fargo Bank, N.A .

Represented By

Dane W Exnowski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:14-20797 Richard Goodwin, Jr

Chapter 7

#4.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 253 East 7th Street, Pomona, California 91766-3308

MOVANT: THE BANK OF NEW YORK MELLON

EH__

Docket 91

Tentative Ruling:

09/12/17

GRANT relief from the stay under §§ 362(d)(1) and (d)(4). Court finds that bankruptcy case was part of a scheme to hinder, delay and defraud creditors based on multiple bankruptcy filings and unauthorized transfers affecting this property. GRANT waiver of 4001(a)(3) stay and GRANT as to ¶10(b). DENIED as to ¶ 11(a) for lack of cause shown.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Richard Goodwin Jr

Pro Se

Movant(s):

The Bank of New York Mellon FKA

Represented By
Mark D Estle

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:16-10048 Margaret Crain

Chapter 13

#5.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1399 Withorn Court, Riverside, California 92507-8400

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 55

Tentative Ruling:

09/12/2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
GRANT request under ¶ 3 permitting Movant to offer Debtor loan workout options.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Margaret Crain

Represented By
Lauren Rode

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Jamie D Hanawalt
Jessica L Carter

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:16-17902 Patricia Daniels

Chapter 13

#6.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 7421 Red Clover Way, Highland CA 92346

MOVANT: DEUTSCHE BANK NATIONAL TRUST COMPANY

EH__

Docket 31

***** VACATED *** REASON: ORDER ENTERED 8/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Daniels

Represented By
Benjamin R Heston

Movant(s):

Deutsche Bank National Trust

Represented By
Kristin A Zilberstein
Nancy L Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-10830 Juana Santiago

Chapter 13

#7.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2803 Lyon Ave, Riverside, California 92503-5816

MOVANT: U.S. BANK NATIONAL ASSOCIATION

EH__

Docket 38

Tentative Ruling:

09/12/2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
GRANT request under ¶ 3 permitting Movant to offer Debtor loan workout options.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Juana Santiago

Represented By
Rebecca Tomilowitz

Movant(s):

U.S. Bank National Association, as

Represented By
Jamie D Hanawalt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-11279 Teresa Julia Chavez

Chapter 13

#8.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 2223 Smoke Tree Lane, Ontario, CA 91762

MOVANT: BOSCO CREDIT LLC

EH__

Docket 39

Tentative Ruling:

09/12/2017

Service: Proper

Opposition: Yes

Subject to discussions regarding an APO, the Court is inclined to GRANT relief based
on the number of missed payments.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Teresa Julia Chavez

Represented By
Manfred Schroer

Movant(s):

BOSCO CREDIT LLC, its

Represented By
Nichole Glowin

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-12886 Ryan Keith Richardson and Joyce Nanette Richardson

Chapter 7

#9.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Ford Focus, VIN: 1FADP3K21EL118549

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 40

Tentative Ruling:

09/12/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Ryan Keith Richardson

Represented By
Ronald B Talkov

Joint Debtor(s):

Joyce Nanette Richardson

Represented By
Ronald B Talkov

Movant(s):

Wells Fargo Bank, N.A. dba Wells

Represented By
Sheryl K Ith

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

CONT... Ryan Keith Richardson and Joyce Nanette Richardson

Chapter 7

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-14393 Felipe Ernesto LeFranc, Sr and Ligia Elizabeth LeFranc

Chapter 7

#10.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Mitsubishi Outlander

MOVANT: MMCA LEASE LTD

EH__

Docket 9

Tentative Ruling:

09/12/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Felipe Ernesto LeFranc Sr Pro Se

Joint Debtor(s):

Ligia Elizabeth LeFranc Pro Se

Movant(s):

MMCA Lease LTD Represented By
Scott S Weltman

Trustee(s):

Robert Whitmore (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-14906 Roger James Gardner

Chapter 13

#11.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 920 Paseo El Mirador, Palm Springs CA 92262

MOVANT: LOUIS J SILVESTRI AND LINDA SILVESTRI, TRUSTEE OF THE LOUIS J SILVESTRI AND LINDA SILVESTRI FAMILY TRUST EST. 2/5/81

EH__

Docket 23

Tentative Ruling:

09/12/2017
Service: Proper
Opposition: Yes

Movant has established cause to GRANT relief from the stay under § 362(d)(1) based on the Debtor's failure to make postpetition payments and GRANT waiver of 4001(a) (3) stay the request for termination of the co-debtor stay. Parties to discuss adequate protection and timing and likelihood of sale.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Roger James Gardner

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Louis J Silvestri and Linda Silvestri,

Represented By
Julian K Bach

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-15075 Namal De Silva

Chapter 7

#12.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 24802 Sunset Vista Avenue, Menifee, CA 92584

MOVANT: HSBC BANK USA, NATIONAL ASSOCIATION

EH__

Docket 12

Tentative Ruling:

09/12/17
Service: Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay. GRANT relief under ¶2 of request for relief.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Namal De Silva

Represented By
Lionel E Giron

Movant(s):

HSBC Bank USA, National

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-15089 Joseph Luc Bernard

Chapter 7

#13.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: U 2015 NISSAN VERSA NOTE VIN
3N1CE2CP8FL441473

MOVANT: BANK OF AMERICA NA

EH__

Docket 11

Tentative Ruling:

09/12/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001
(a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing,
the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Joseph Luc Bernard

Represented By
Marjorie M Johnson

Movant(s):

Bank of America, N.A.

Represented By
Megan E Lees

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-15262 Hector Paez Valdez and Yolanda Garcia Valdez

Chapter 7

#14.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 NISSAN MURANO, VIN # 5N1AZ2MGXGN151935

MOVANT: NISSAN MOTOR ACCEPTANCE

EH__

Docket 12

Tentative Ruling:

09/12/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Hector Paez Valdez

Represented By
Carey C Pickford

Joint Debtor(s):

Yolanda Garcia Valdez

Represented By
Carey C Pickford

Movant(s):

NISSAN MOTOR ACCEPTANCE

Represented By
Michael D Vanlochem

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

CONT... Hector Paez Valdez and Yolanda Garcia Valdez

Chapter 7

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-15816 Integrated Wealth Management Inc

Chapter 7

#15.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 620 Newport Center Drive, Suite 650, Newport Beach, CA 92660

MOVANT: THE IRVINE COMPANY, LLC

EH__

Docket 25

Tentative Ruling:

9/12/2017

Service: Proper

Opposition: None

On July 12, 2017, a Chapter 7 involuntary petition was filed against Integrated Wealth Management Inc. ("Debtor"). On August 11, 2017, the Court, upon stipulation of Debtor and the Petitioning Creditors, extended the deadline for Debtor to respond to the involuntary petition until September 12, 2017.

On August 21, 2017, the Irvine Company (the "Landlord") filed a motion for relief from stay.

On September 7, 2017, the Landlord and Debtor filed a stipulation resolving the motion, which obligates Debtor to turn over possession of leased premises, and for relief from stay to permit setoff of security deposit and termination of lease. The Court is inclined to APPROVE the stipulation, EXCEPT for the setoff provision, which the Court believes is improvident, given Debtor's status as an involuntary debtor, until a Chapter 7 Trustee is appointed.

APPEARANCES REQUIRED.

Party Information

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

CONT... Integrated Wealth Management Inc

Chapter 7

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

Movant(s):

The Irvine Company, LLC

Represented By
R Gibson Pagter Jr.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-15867 Silvia Alvarez

Chapter 13

#16.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: Re: 940 W Olive St, Corona CA 92882

MOVANT: STATE FARM BANK FSB

EH__

Docket 13

Tentative Ruling:

09/12/2017
Service: Proper
Opposition: None

The Debtor had two prior cases pending and dismissed within the prior year. On this basis, the Court grants Movant's request for an order confirming that there is no stay currently in effect as to the Debtor. Based on the multiple bankruptcies affecting the Property, the Court GRANTS relief from the stay under §§ 362(d)(1) and (d)(4). GRANT waiver of 4001(a)(3) stay. The Court further GRANTS relief under ¶¶ 3, 6, 9(b), and 11. Relief is DENIED under ¶10(b) for lack of cause shown.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Silvia Alvarez

Represented By
Filemon Kevin Samson III

Movant(s):

State Farm Bank, F.S.B.

Represented By
Jason C Kolbe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-16421 Sergio F Cisneros

Chapter 13

#17.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 40756 La Colima Rd, Temecula, CA 92591

MOVANT: US BANK NATIONAL ASSOCIATION

CASE DISMISSED 8/21/17

EH__

Docket 10

Tentative Ruling:

09/12/17
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(4). Court finds that bankruptcy case was part of a scheme to hinder, delay and defraud creditors based on multiple bankruptcy filings ALSO affecting this property. The Court finds bad faith as to the Debtor. GRANT waiver of 4001(a)(3) stay. GRANT pursuant to ¶¶ 3, 6, and 12.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Sergio F Cisneros Pro Se

Movant(s):

U.S. Bank National Association Represented By
Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-16490 Brandon Geoffrey Bosch

Chapter 7

#18.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: Real Property 801 E. Florida Ave, Hemet 92543.

MOVANT: JASON R. OROPEZA

EH__

Docket 13

Tentative Ruling:

09/12/17
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1). GRANT waiver of 4001(a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Brandon Geoffrey Bosch

Represented By
Glenn Park

Movant(s):

Jason R. Oropeza

Represented By
William E Windham

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-16554 Luis Desantiago, Jr.

Chapter 7

#19.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2012 Heartland Elkridge Travel Trailer

MOVANT: BANK OF THE WEST

EH__

Docket 12

Tentative Ruling:

09/12/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001
(a)(3) stay. GRANT relief from the co-debtor stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing,
the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Luis Desantiago Jr. Pro Se

Movant(s):

BANK OF THE WEST Represented By
Mary Ellmann Tang

Trustee(s):

Karl T Anderson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-16757 Carla Lindo

Chapter 13

#20.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Re: 28045 PROMONTORY LANE, VALENCIA, CA 91354

MOVANT: HSBC BANK USA

CASE DISMISSED 9/1/17

EH__

Docket 10

Tentative Ruling:

09/12/2017

Service: Proper

Opposition: None

GRANT relief from the stay under §§ 362(d)(1), (d)(2), and (d)(4). GRANT waiver of 4001(a)(3) stay. As to the Movant's request for an order confirming the stay is not in effect, the Court finds that the stay terminated on September 1, 2017, when the instant case was dismissed. As to whether a stay was in effect prior to dismissal, the order granting in rem relief in Case No. 2:17-17471-NB was entered on August 15, 2017, but Movant has not provided that the order was recorded so as to effectuate the grant of in rem relief therein, and Movant has not otherwise presented argument as to why the stay would not be in effect.

As to annulment, the Movant has not identified any action taken prior to the entry of the order dismissing the case to warrant such relief. The request for annulment is therefore DENIED.

Court finds that bankruptcy case was part of a scheme to hinder, delay and defraud creditors based on multiple bankruptcy filings and unauthorized transfers affecting this property.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

CONT... Carla Lindo

Chapter 13

GRANT waiver of 4001(a)(3) stay. GRANT pursuant to ¶¶ 6, 7(b), 8, 9(b), and 11 of the prayer for relief. DENIED as to ¶¶ 10(b) and 13 for lack of cause shown.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Carla Lindo

Pro Se

Movant(s):

HSBC Bank USA, National

Represented By
Jason C Kolbe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-16923 Jaelyn Roylene Young

Chapter 13

#21.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Real Property

MOVANT: JAELYN YOUNG

EH__

Docket 13

Tentative Ruling:

09/12/2017

The Debtor has provided sufficient evidence that the current chapter 13 plan is proposed in good faith based on her substantial increase in income following a period of unemployment at the end of her prior chapter 13 case, and on that basis will GRANT the Motion and continue the stay.

*The Court notes that on Page 5 of the Motion there is what appears to be a particularly striking typo where the Movant asserts as a basis for good faith that the Debtor is "**not** gainfully employed".

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Jaelyn Roylene Young

Represented By
Christopher J Langley

Movant(s):

Jaelyn Roylene Young

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-16994 Stasha Lauran Sill

Chapter 13

#22.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate ANY AND ALL PERSONAL AND REAL PROPERTY

MOVANT: STASHA LAURAN SILL

EH__

Docket 13

***** VACATED *** REASON: CONTINUED TO 9/19/17 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stasha Lauran Sill

Represented By
Paul Y Lee

Movant(s):

Stasha Lauran Sill

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

6:17-15077 Claudia Acevedo

Chapter 7

#22.10 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 16462 Ridge Field Drive, Riverside, CA

MOVANT: GW SAN DIEGO PROPERTIES LLC

EH__

Docket 31

Tentative Ruling:

09/12/2017

The Debtor's case was dismissed on 07/07/2017 and the stay terminated on that date. Debtor asserts that the Motion should be denied on this basis as moot. However, the Motion seeks annulment of the stay to validate acts undertaken postpetition and prior to the dismissal. On 09/11/2017, the Court entered a related order annulling the stay as to US Bank to validate the sale of the Property to Movant. To the extent the Property was still subject to the stay after annulment was granted to US Bank, granting of the instant Motion to validate the postpetition Unlawful Detainer acts of Movant is appropriate and consistent with the 09/11/2017 order. The Court is inclined to GRANT the Motion under § 362(d)(1), GRANT Waiver of the 14-day stay, GRANT as to ¶¶ 3, 4, and 11. The Motion is DENIED as to ¶¶ 7, 9 and 10 for lack of cause shown.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Claudia Acevedo

Represented By
Richard McAndrew

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 12, 2017

Hearing Room 303

10:00 AM

CONT... Claudia Acevedo

Chapter 7

Movant(s):

GW San Diego Properties, LLC

Represented By
Helen G Long

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, September 12, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#23.00 CONT U.S. Trustee Motion to dismiss or convert Chapter 11 Case

From: 6/27/17, 7/11/17, 8/1/17, 8/22/17, 8/29/17

Also #24

EH__

Docket 266

Tentative Ruling:

7/11/17

BACKGROUND

On May 11, 2016, Debtor filed a Chapter 11 voluntary petition. Debtor operated a medical account receivable collection service. On November 30, 2016, a Chapter 11 trustee was appointed.

On June 2, 2017, UST filed a motion to dismiss the Chapter 11 case for failure to pay quarterly fees of either \$9,750 or \$6,825, which were delinquent as of May 1, 2017. On June 13, 2017, the Chapter 11 trustee filed opposition to the motion to dismiss.

DISCUSSION

11 U.S.C. § 1112(b) provides that a case may be dismissed or converted for cause. Section 1112(b)(4) enumerates certain examples of cause, including "failure to pay

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CONT... Allied Injury Management, Inc. Chapter 11

any fees or charges required under chapter 123 of title 28." 28 USC § 1930(a)(6) imposed the statutory fees for Chapter 11 cases. Therefore, cause exists to convert the case when Chapter 11 quarterly fees are not paid.

The Chapter 11 trustee states, however, that \$6,000 of the past due fees were paid on June 12, 2017, and that the Chapter 11 trustee will pay the remaining balance.

TENTATIVE RULING

Chapter 11 trustee to inform the Court whether the Chapter 11 quarterly fees have been paid in full.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

United States Trustee (RS)

Represented By
Michael J Bujold
Abram Feuerstein esq
Everett L Green
Mohammad Tehrani

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer

**United States Bankruptcy Court
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2:00 PM

CONT...

Allied Injury Management, Inc.

Victor A Sahn

Chapter 11

**United States Bankruptcy Court
Central District of California
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Tuesday, September 12, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#24.00 CONT First Omnibus Objection of Debtor-In-Possession Allied Injury Management, Inc. Seeking Disallowance of Certain Proofs of Claim

From: 11/8/16, 12/6/16, 1/10/17, 3/7/17,4/4/17, 4/25/17, 6/27/17, 7/11/17

Also #23

EH__

Docket 83

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
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Tuesday, September 12, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01279 Allied Injury Management, Inc. v. One Stop Multi-Specialty Medical Group

#25.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01279. Complaint by Allied Injury Management, Inc. against One Stop Multi-Specialty Medical Group & Therapy, Inc., One Stop Multi-Specialty Medical Group, Inc., Nor Cal Pain Management Medical Group, Inc.. (Charge To Estate). Complaint for (1) Breach of Contract; (2) Account Stated; and (3) Unjust Enrichment Nature of Suit: (14 (Recovery of money/property - other))

From: 1/24/17, 3/7/17, 4/25/17, 6/27/17, 7/11/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Nor Cal Pain Management Medical

Represented By
Maria K Pum
Maria C Armenta

One Stop Multi-Specialty Medical

Represented By
Maria K Pum
Maria C Armenta

One Stop Multi-Specialty Medical

Represented By
Maria K Pum
Maria C Armenta

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2:00 PM

CONT... Allied Injury Management, Inc.

Chapter 11

Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

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Central District of California
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Wednesday, September 13, 2017

Hearing Room 303

10:00 AM

6:17-12964 Raul L Amaya and Leslie Amaya

Chapter 7

#1.00 CONT Pro se Reaffirmation Agreement Between Debtor and Navy Federal Credit Union re 2012 Dodge Ram in the amount of \$25,595.14

From: 8/23/17

EH__

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raul L Amaya

Represented By
Daniel King

Joint Debtor(s):

Leslie Amaya

Represented By
Daniel King

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Courtroom 303 Calendar**

Wednesday, September 13, 2017

Hearing Room 303

11:00 AM

6:17-16508 Steven Anthony Arzola

Chapter 7

#2.00 Motion to vacate dismissal order and reinstate chapter 7 case

EH__

Docket 19

Tentative Ruling:

9/13/17

BACKGROUND

On August 4, 2017, Steven Arzola ("Debtor") filed a Chapter 7 voluntary petition. That same day, Debtor's attorney, Paul Lee, filed an electronic filing declaration and a statement about social security number, however, the two documents included information for a different debtor. On August 7, 2017, the court issued a notice of dismissal if required documents are not filed within 72 hours. The case was dismissed on August 11, 2017.

On August 14, 2017, Debtor filed a motion to vacate dismissal. The next day, Debtor filed the correct copies of the electronic filing declaration and the statement about your social security number.

DISCUSSION

While Debtor has requested the dismissal be vacated pursuant to Fed. R. Civ. P. Rule 60(b) or 61, or 11 U.S.C. § 105(a), the Central District of California has a local rule governing this situation. Local Rule 1017-(2)(c)(1) states:

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CONT... Steven Anthony Arzola

Chapter 7

- (1) Any motion requesting that the dismissal of a case for failure to timely file a required document or for failure to appear at the meeting of creditors be vacated must include as exhibits to the motion all of the documents that were not timely filed and must be supported by a declaration under penalty of perjury establishing a sufficient explanation why the documents were not timely filed. The motion may be ruled on without further notice or hearing pursuant to LBR 9013-1(q).

Here, while Debtor did not abide by the applicable rule, the documents were separately uploaded. Under Local Rule 1017-(2)(c)(1), a motion to vacate dismissal in this situation can be ruled on without a hearing. For the same rationale as the above rule is founded upon, and in the absence of any opposition, the Court is inclined to grant the motion.

TENTATIVE RULING

The Court is inclined to GRANT the motion.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Steven Anthony Arzola

Represented By
Paul Y Lee

Movant(s):

Steven Anthony Arzola

Represented By
Paul Y Lee

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CONT... Steven Anthony Arzola

Chapter 7

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, September 13, 2017

Hearing Room 303

11:00 AM

6:17-16196 Laura Montoya

Chapter 7

#3.00 Motion to Dismiss Case for Abuse With A Re-filing Bar

EH__

Docket 8

Tentative Ruling:

9/13/17

BACKGROUND

On July 25, 2017, Laura Montoya ("Debtor") filed a Chapter 7 voluntary petition. Debtor had previously filed four bankruptcies in the previous two years, all of which were summarily dismissed. On August 9, 2017, UST filed a motion to dismiss case with a re-filing bar.

DISCUSSION

I. Dismissal

11 U.S.C. § 707(b)(1) permits the Court to dismiss a Chapter 7 case for abuse. 11 U.S.C. § 707(b)(3)(A) states:

(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in

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CONT...

Laura Montoya

Chapter 7

paragraph (2)(A)(i) does not arise or is rebutted, the court shall consider –

(A) whether the debtor filed the petition in bad faith

In determining whether a case should be dismissed under § 707(b)(3)(A), the Court considers the totality of the circumstances, but is ultimately instructed to consider whether "the debtor's intention in filing a bankruptcy petition is inconsistent with the Chapter 7 goals of providing a 'fresh start' to debtors and maximizing the return to creditors." *In re Mitchell*, 357 B.R. 142, 154-55 (Bankr. C.D. Cal. 2006) (listing factors to be considered in making that determination).

The majority of the *Mitchell* factors are inapplicable when, as here, a debtor files a skeletal petition that does not provide the Court with sufficient information to apply the *Mitchell* test. Only factor seven (history of bankruptcy filings) and, possibly, factor nine (egregious behavior) can be assessed when a debtor files a skeletal petition. Both those factors weigh in favor of dismissal when, as here, a debtor repeatedly files skeletal petitions during a short period of time, and does not disclose previous filings. While § 707(a)(1) and (3) provide for dismissal when a debtor fails to fulfill his duties under the Bankruptcy Code, when a debtor repeatedly filed bankruptcy and fails to evince any attempt to comply with the filing requirements, it can be inferred, absent any indication to the contrary, that the debtor's purpose in filing bankruptcy is not to take advantage of the fresh start. *See, e.g., In re Craighead*, 377 B.R. 648, 655 (Bankr. N.D. Cal. 2007) ("Courts generally hold that when a debtor repeatedly files bankruptcy petitions and then repeatedly fails to file schedules or to comply with other requirements, this pattern of behavior is evidence of bad faith and an attempt to abuse the system."). Dismissal under § 707(b)(3) is appropriate in those circumstances.

II. Re-Filing Bar

The court is empowered to impose a refiling bar under 11 U.S.C. § 349(a). As Collier

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CONT... Laura Montoya

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notes, courts' analysis of this section is somewhat confused due to confounding "dismissal with prejudice" with "dismissal with injunction against future filings." Collier on Bankruptcy ¶ 349.02[3]; *compare In re Garcia*, 479 B.R. 488 (Bankr. N.D. Ind. 2012) (denying motion for dismissal with prejudice, but imposing three-year refiling bar) *with In re Craighead*, 377 B.R. 648 (Bankr. N.D. Cal. 2007) (appearing to equate dismissal with prejudice with an injunction against refiling).

There is also a circuit split concerning whether an injunction on refiling for more than 180 days is allowed under the Bankruptcy Code. *Compare In re Frieouf*, 938 F.2d 1099 (10th Cir. 1991) (180 days is maximum allowed length of refiling injunction) *with Casse v. Key Bank Nat. Ass'n*, 198 F.3d 327 (2nd Cir. 1999) (injunction against filing for more than 180 days permissible). 11 U.S.C. § 349(a) reads:

Unless, the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

The disagreement revolves around whether the qualifier "Unless, the court, for cause, orders otherwise" modifies the content after the semi-colon. *In re Leavitt* noted this disagreement, but since the court was dealing with a dismissal with prejudice, rather than an injunction against refiling, it did not resolve the issue. 209 B.R. 935, 942 (9th Cir. B.A.P. 1997). Within the Ninth Circuit, it appears the trend is to adopt the reasoning of the Second Circuit and allow injunctions for more than 180 days. *See e.g. In re Velasques*, 2012 WL 8255582 at *3 (Bankr. E.D. Cal. 2012).

Here, Debtor has filed four skeletal bankruptcies in the previous two years and failed to disclose the previous filings. As noted above, the Court has determined that Debtor's behavior is sufficient to warrant dismissal for bad faith and the Court finds the requested two year refiling bar to be appropriate.

Moreover, Debtor's failure to oppose is deemed consent to the relief requested pursuant to Local Rule 9013-1(h).

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CONT... Laura Montoya

Chapter 7

TENTATIVE RULING

The Court is inclined to GRANT the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Laura Montoya

Pro Se

Movant(s):

United States Trustee (RS)

Represented By
Abram Feuerstein esq

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

11:00 AM

6:17-12976 Modern Properties, LLC

Chapter 7

#4.00 CONT Motion to Vacate Dismissal of Case

From: 6/7/17, 6/28/17, 8/2/17

EH__

Docket 12

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Modern Properties, LLC

Represented By
Robert L Firth

Movant(s):

Larry D Simons (TR)

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, September 13, 2017

Hearing Room 303

11:00 AM

6:17-12748 William A. Mendez, II and Shawna D. Mendez

Chapter 7

#5.00 Motion for extension of time to file a complaint objecting to discharge

Also #6

EH__

Docket 43

Tentative Ruling:

9/13/17

BACKGROUND

On April 4, 2017, William & Shawna Mendez ("Debtors") filed a Chapter 7 voluntary petition. On June 13, 2017, the Court authorized the employment of Levene, Neale, Bender, Yoo & Brill L.L.P. as counsel for Trustee.

On July 12, 2017, the Court approved the stipulation of Trustee and Debtors to extend the deadline to file a complaint objecting to discharge until September 1, 2017. On August 23, 2017, Trustee filed a motion for extension of time to file a complaint objecting to discharge. The basis for Trustee's motion is that, despite three continuances of the meeting of creditors, Debtors have not yet fully complied with Trustee's requests for information.

DISCUSSION

Fed. R. Bankr. P. Rule 4004(a) states:

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CONT...

William A. Mendez, II and Shawna D. Mendez

Chapter 7

- (1) In a chapter 7 case, a complaint, or a motion under § 727(a)(8) or (9) of the Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 case, the complaint shall be filed no later than the first date set for the hearing on confirmation. In a chapter 13 case, a motion objecting to the debtor's discharge under § 1328(f) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). At least 28 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.

And Fed. R. Bankr. P. Rule 4004(b) states:

- (1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.
- (2) A motion to extent the time to object to discharge may be filed after the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.

Here, Debtor's delay in providing the requested information constitutes sufficient cause to extend the deadline. *See* Collier on Bankruptcy ¶ 4004.03[2] (16th ed. 2013) ("A debtor's delays in responding to discovery may be sufficient cause. Obviously, a delay in the meeting of creditors to a date close to or after the deadline may constitute such cause.") (*citing In re McCormack*, 244 B.R. 203 (Bankr. D. Conn. 2000)).

Moreover, Debtor's failure to oppose may be deemed consent to the relief requested pursuant to Local Rule 9013-1(h).

TENTATIVE RULING

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CONT... William A. Mendez, II and Shawna D. Mendez

Chapter 7

The Court is inclined to GRANT the motion.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

William A. Mendez II

Represented By
Thomas J Polis

Joint Debtor(s):

Shawna D. Mendez

Represented By
Thomas J Polis

Movant(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy

Trustee(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy

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11:00 AM

6:17-12748 William A. Mendez, II and Shawna D. Mendez

Chapter 7

#6.00 Motion Authorizing Trustee to Release Debtors' Documents and Records to Creditors Andrew Hadra and Vertical Partners, LLC

Also #5

EH__

Docket 44

Tentative Ruling:

9/13/17

BACKGROUND

On April 4, 2017, William & Shawna Mendez ("Debtors") filed a Chapter 7 voluntary petition. On June 13, 2017, the Court authorized the employment of Levene, Neale, Bender, Yoo & Brill L.L.P. as counsel for Trustee.

On June 23, 2017, Trustee filed a notice of intention to release documents. On July 7, 2017, Andrew Hadra & Vertical Partners LLC ("Plaintiffs") filed a non-dischargeability complaint against Debtors. On August 23, 2017, Trustee filed a motion seeking authorization to release Debtors' documents and records to Plaintiffs. Trustee appears to have filed the motion because, at a continued meeting of creditors on July 17, 2017, Debtors indicated that they objected to the release of the documents. Trustee states that Debtors indicated they may have been willing to consent to a release if a confidentiality agreement was in place, but Debtors have not yet signed the confidentiality agreement prepared by Trustee.

DISCUSSION

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Hearing Room 303

11:00 AM

CONT... William A. Mendez, II and Shawna D. Mendez

Chapter 7

11 U.S.C. § 704(a)(7) states:

(a) The trustee shall –

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate’s administration as is requested by a party in interest

Debtors have not opposed the motion and thus are deemed to consent to the relief requested pursuant to Local Rule 9013-(1)(h).

TENTATIVE RULING

Here, it is unclear from the evidence presented whether the requested documents fall within the definition of § 704(a)(7). Subject to representation from the Trustee in the affirmative, the Court is inclined to GRANT the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

William A. Mendez II

Represented By
Thomas J Polis

Joint Debtor(s):

Shawna D. Mendez

Represented By

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CONT... William A. Mendez, II and Shawna D. Mendez
Thomas J Polis

Chapter 7

Movant(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy

Trustee(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy

**United States Bankruptcy Court
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Wednesday, September 13, 2017

Hearing Room 303

11:00 AM

6:17-12451 Javier Ruiz Olivas and Gloria Olguin

Chapter 7

#7.00 Motion to Reopen Chapter 7 Case

EH__

Docket 26

Tentative Ruling:

9/13/17

BACKGROUND

On March 28, 2017, Javier Olivas & Gloria Olguin ("Debtors") filed a Chapter 7 voluntary petition. On July 10, 2017, Debtors received a discharge, and the case was closed on July 11, 2017. On July 24, 2017, Alan Gatto ("Gatto") filed a motion for relief from stay. Gatto received a notice to filer stating that the motion was filed in a closed case and no action would be taken. On August 15, 2017, Gatto filed a motion to reopen the case, and amended the motion the next day.

DISCUSSION

11 U.S.C. § 350(b) states: "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." Paragraph six of Gatto's declaration appears to indicate that he wishes to file a motion to annul the stay to validate the a state court judgment in an unlawful detainer case. Gatto's declaration states that the judgment was entered on June 28, 2016, however, his attached exhibit indicates that the judgment was entered on June 8, 2017.

Motions to reopen bankruptcy cases "should be routinely granted." *In re Dodge*, 138

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CONT... Javier Ruiz Olivas and Gloria Olguin Chapter 7

B.R. 602, 605 (Bankr. E.D. Cal. 1992). "While the Code does not define 'other cause' for purposes of reopening a case under section 350(b), the decision to reopen is discretionary with the court, which may consider numerous factors, including equitable concerns, and ought to emphasize substance over technical considerations." 3 Collier on Bankruptcy ¶ 350.03[5] (16th ed. 2016). Here, Gatto attempted to file a motion for relief from stay shortly after the case was closed, it does not appear Gatto was noticed of the bankruptcy filing, and this Court is the only court that can provide the requested relief.

Furthermore, the Court deems failure to oppose to be consent to the requested relief.

TENTATIVE RULING

The Court is inclined to GRANT the motion and REOPEN the case for a period of sixty days.

APPEARANCES WAIVED. Movant to lodge an order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued,

Party Information

Debtor(s):

Javier Ruiz Olivas

Represented By
Aldo A Flores

Joint Debtor(s):

Gloria Olguin

Represented By
Aldo A Flores

Movant(s):

Alan Gatto

Represented By
Helen G Long

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CONT... Javier Ruiz Olivas and Gloria Olguin

Chapter 7

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
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Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, September 13, 2017

Hearing Room 303

11:00 AM

6:16-10503 Leila Osiris Lopez Zavala

Chapter 7

#8.00 Trustee's Final Report and Applications for Compensation

EH__

Docket 32

Tentative Ruling:

09/13/2017

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 914.80
Trustee Expenses: \$ 98.76

The Court's reduction in the requested Trustee's fees are based on the following: (1) Trustee's calculation identifies \$2,599.81 in proposed distributions (see page 4 of supplemental declaration), yet Trustee's only proposes \$2,576.88 in distributions (see page 9).

Trustee may decline to appear and will be deemed to submit to the tentative, or may appear and argue the proposed reduction.

Party Information

Debtor(s):

Leila Osiris Lopez Zavala

Represented By
Curtis R Aijala

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
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Judge Mark Houle, Presiding
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Wednesday, September 13, 2017

Hearing Room 303

11:00 AM

6:16-10197 Ferdinand D Castillo

Chapter 7

#9.00 Motion for Turnover of Property of the Estate

EH__

Docket 74

Tentative Ruling:

9/13/17

PROCEDURAL BACKGROUND

On January 11, 2016, Ferdinand Castillo ("Debtor") filed a Chapter 7 voluntary petition. On April 25, 2016, Debtor received a discharge.

On November 3, 2016, the Court authorized the employment of Malcolm Cisneros as Trustee's counsel. On December 14, 2016, Trustee filed a motion to approve compromise. On December 21, 2016, Trustee filed a motion to sell certain real property located at 2326 Canyon Park Dr., Diamond Bar, CA 91765 (the "Diamond Bar Property"). On January 9, 2017, the Court granted Trustee's motion to approve compromise and on January 13, 2017, Trustee's sale motion was granted.

On August 11, 2017, Trustee filed a motion for turnover of property of the estate pursuant to §§ 521(a)(4) and 542(a). Specifically, Trustee requests turnover of rental payments totaling \$23,400 and copies of twelve months of bank statements leading up to the petition date.

FACTUAL BACKGROUND

**United States Bankruptcy Court
Central District of California
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CONT... Ferdinand D Castillo

Chapter 7

Initially, Debtor did not list the Diamond Bar Property on Schedules A/B, however, the Diamond Bar Property was referenced through the identification of a Schedule D claim, in the amount of \$288,000, secured by the Diamond Bar Property. After Trustee learned that Debtor was on the title to the Diamond Bar Property, Debtor amended Schedules A/B to include the Diamond Bar Property. Debtor included an attachment to the amended schedules that stated the Diamond Bar Property was owned by his son, who resided there, that Debtor was on the title "for purposes of loan application and security only" and that the down payment on the Diamond Bar Property came from his son's personal injury settlement. Debtor claimed an exemption of \$83,600 in the Diamond Bar Property.

Later, after further investigation by Trustee, Debtor indicated that he and his would surrender the Diamond Bar Property for the Trustee to sell. On August 23, 2016, Debtor amended Schedule C, removing the claimed exemption in the Diamond Bar Property. On January 13, 2017, the Court approved a sale of the Diamond Bar Property for \$380,000.

Later, Trustee became aware that Debtor's son did not reside at the Diamond Bar Property, but, instead, Debtor had renting the property to tenants since August 2015, collecting said rents, and concealing the rents from Trustee. Trustee requests turnover of thirteen monthly rental payments of \$1,800, and disclosure of Debtor's bank statements for the year prior to the petition date.

DISCUSSION

11 U.S.C. § 541(a)(1) states:

- (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all of the following property,

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wherever located and by whomever held:

- (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

Furthermore, 11 U.S.C. § 541(a)(6) including within the category of property of the estate: "[p]roceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case." Under § 541(a)(1), Debtor's interest in the Diamond Bar Property because property of the estate, and, under § 541(a)(6), the monthly rent payments became property of the estate.

11 U.S.C. § 521(a)(4) states:

(a) The debtor shall –

- (4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title.

Here, as is noted above, the rental payments are property of the estate. Pursuant to § 521(a)(4), Debtor is required to turn over property of the estate and recorded information related thereto. Furthermore, the Court deems the Debtor's non-opposition to be consent to the requested relief pursuant to Local Rule 9013-(1)(h).

TENTATIVE RULING

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The Court is inclined to GRANT the motion.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Ferdinand D Castillo

Represented By
Walter Scott

Movant(s):

Arturo Cisneros (TR)

Represented By
William Malcolm
Christina J O

Trustee(s):

Arturo Cisneros (TR)

Represented By
William Malcolm
Christina J O

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

#10.00 CONT Motion to Approve Compromise Under Rule 9019 between Trustee and Dr. Eric L. Freedman

From: 5/11/16, 6/8/16, 6/29/16, 8/31/16, 10/5/16, 11/9/16, 2/1/17, 5/3/17

EH__

Docket 322

***** VACATED *** REASON: CONTINUED TO 12/13/17 AT 11:00 A.M.**

Tentative Ruling:

05/11/2016

Based on the representations made to the Court by counsel for the Parties that negotiations are ongoing, and based on the consent of the Parties to a continuance, the Court shall CONTINUE the hearing on the Motion to June 8, 2016 at 11:00 a.m.

APPEARANCES ARE WAIVED.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes

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CONT...

Douglas J Roger, MD, Inc., A Professional Corporat

D Edward Hays

Franklin R Fraley Jr

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6:10-13285 Laureen Martha Harley

Chapter 7

#11.00 CONT Motion objecting to debtor's claimed exemption in funds pursuant to California Code Of Civil Procedure Section 583.140

From: 4/26/17, 5/10/17, 6/7/17, 7/12/17

EH__

Docket 35

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/8/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Laureen Martha Harley

Represented By
James M Powell - DISBARRED -
Michael H Raichelson

Trustee(s):

Steven M Speier (TR)

Represented By
Robert P Goe

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6:17-12748 William A. Mendez, II

Chapter 7

Adv#: 6:17-01129 Hadra et al v. Mendez et al

#12.00 Status Conference Re: Complaint by Andrew C. Hadra against William A. Mendez. false pretenses, false representation, actual fraud, 67- Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 68 - Dischargeability - 523(a)(6), willful and malicious injury

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William A. Mendez II

Represented By
Thomas J Polis

Defendant(s):

Shawna D Mendez

Represented By
Thomas J Polis

William A. Mendez

Represented By
Thomas J Polis

Joint Debtor(s):

Shawna D. Mendez

Represented By
Thomas J Polis

Plaintiff(s):

Vertical Partners LLC

Represented By
Peter W Lianides

Andrew C. Hadra

Represented By
Peter W Lianides

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CONT... William A. Mendez, II

Chapter 7

Trustee(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy

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6:16-20927 Mee Soon Kim

Chapter 7

Adv#: 6:17-01012 Simons v. Kim

#13.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01012. Complaint by Larry Simons against Tae Young Kim. Complaint for (1) Declaratory Relief, (2) To Quiet Title, And (3) Avoidance and Recovery of Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(A) and (B), 550(a)(1) and (2); and, California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(91 (Declaratory judgment)

FROM: 3/29/17, 5/3/17, 7/12/17

EH__

Docket 1

*** VACATED *** REASON: JUDGMENT ENTERED 8/23/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mee Soon Kim

Represented By
Minh Duy Nguyen

Defendant(s):

Tae Young Kim

Pro Se

Plaintiff(s):

Larry Simons

Represented By
Michael W Davis

Trustee(s):

Larry D Simons (TR)

Represented By
David Seror
Michael W Davis

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6:16-15419 Francisco Javier Castillo

Chapter 7

Adv#: 6:16-01310 Swift Financial Corporation d.b.a. Swift Capital v. Castillo

#14.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01310. Complaint by Swift Financial Corporation d.b.a. Swift Capital against Francisco Javier Castillo (willful and malicious injury)

From: 5/3/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco Javier Castillo

Represented By
Joseph M Tosti

Defendant(s):

Francisco Javier Castillo

Pro Se

Plaintiff(s):

Swift Financial Corporation d.b.a.

Represented By
Lazaro E Fernandez

Trustee(s):

Robert Whitmore (TR)

Pro Se

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6:16-11635 Sam Daniel Dason

Chapter 7

Adv#: 6:16-01211 Olivares v. Dason et al

#15.00 CONT Status Conference Re: Amended Complaint by Juddy Olivares, Eric A Panitz against Sam Daniel Dason; 68- Dischargeability - 523(a)(6) Willful and Malicious Injury

From: 11/2/16, 1/4/17, 3/1/17, 3/8/17, 6/7/17, 7/26/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sam Daniel Dason

Represented By
Robert G Uriarte

Defendant(s):

Sam Daniel Dason

Represented By
Robert G Uriarte

Joint Debtor(s):

Greeta Sam Dason

Represented By
Robert G Uriarte

Plaintiff(s):

Juddy Olivares

Represented By
Lazaro E Fernandez
Robert P Goe
Charity J Miller

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CONT... Sam Daniel Dason

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Trustee(s):

Lynda T. Bui (TR)

Represented By
Brett Ramsaur

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6:15-21808 Clifford Patrick Johnson

Chapter 7

Adv#: 6:16-01122 Johnson v. NELNET LOAN SERVICES INC et al

#16.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01122. Complaint by Clifford Patrick Johnson against NELNET LOAN SERVICES INC Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan))

From: 7/6/16, 10/5/16, 12/7/16, 3/22/17, 6/21/17

EH__

Docket 1

***** VACATED *** REASON: CASE DISMISSED 8/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Clifford Patrick Johnson Pro Se

Defendant(s):

Educational Credit Management Represented By
Timothy P Burke

NELNET LOAN SERVICES INC Pro Se

Plaintiff(s):

Clifford Patrick Johnson Pro Se

Trustee(s):

John P Pringle (TR) Pro Se

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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01199 Revere Financial Corporation v. Bank of Southern California, N.A.

#17.00 CONT Status Conference Re: Complaint by Revere Financial Corporation against Bank of Southern California, NA 12 - Recovery of money/property - 547 preference, 14 - Recovery of money/property - other

From: 10/19/16, 11/9/16, 11/30/16, 4/12/17

EH__

Docket 1

***** VACATED *** REASON: ADVERSARY DISMISSED 9/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Bank of Southern California, N.A.

Represented By
Kathryn M.S. Catherwood

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat Chapter 7
Adv#: 6:15-01307 Cisneros v. OIC MEDICAL CORPORATION, a California corporation

#18.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01307. Complaint by A. Cisneros against OIC MEDICAL CORPORATION, a California corporation, LIBERTY ORTHOPEDIC CORPORATION, a California corporation, UNIVERSAL ORTHOPAEDIC GROUP, a California corporation. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers (with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 2/24/16, 4/13/16, 6/22/16, 8/24/16, 11/2/16, 2/1/17, 3/8/17, 7/12/17

EH__

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***** VACATED *** REASON: CONTINUED TO 11/15/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

UNIVERSAL ORTHOPAEDIC

Represented By
Summer M Shaw
George Hanover

LIBERTY ORTHOPEDIC

Represented By
Summer M Shaw

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CONT... **Douglas J Roger, MD, Inc., A Professional Corporat** **Chapter 7**
George Hanover

OIC MEDICAL CORPORATION, a Represented By
Summer M Shaw
George Hanover

Plaintiff(s):

A. Cisneros Represented By
D Edward Hays
Chad V Haes

Trustee(s):

Arturo Cisneros (TR) Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat Chapter 7
Adv#: 6:15-01309 Cisneros v. DOUGLAS J. ROGER, M.D., INC. DEFINED BENEFIT PLAN

#19.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01309. Complaint by A. Cisneros against DOUGLAS J. ROGER, M.D., INC. DEFINED BENEFIT PLAN. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential Transfer (with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other))

From: 12/30/15, 2/24/16, 4/13/16, 6/22/16, 8/24/16, 11/2/16, 2/1/17, 3/8/17, 7/12/17

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***** VACATED *** REASON: CONTINUED TO 11/15/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

DOUGLAS J. ROGER, M.D., INC.

Represented By
Summer M Shaw

Plaintiff(s):

A. Cisneros

Represented By
D Edward Hays
Chad V Haes

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Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat
Adv#: 6:15-01303 Cisneros v. AMERICAN EXPRESS

Chapter 7

#20.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01303. Complaint by A. Cisneros against AMERICAN EXPRESS. (Charge To Estate \$350). For Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers (with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 1/13/16, 3/23/16, 5/25/16, 6/29/16, 8/31/16, 11/2/16, 2/1/17, 5/3/17

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***** VACATED *** REASON: CONTINUED TO 12/13/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

AMERICAN EXPRESS

Represented By
Robert S Lampl
Chad V Haes

Plaintiff(s):

A. Cisneros

Represented By
D Edward Hays
Chad V Haes

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Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Adv#: 6:15-01308 Cisneros v. BWI CONSULTING, LLC et al

#21.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01308. Complaint by A. Cisneros against BWI CONSULTING, LLC, Black and White, Inc., BLACK AND WHITE BILLING COMPANY, BLACK AND WHITE INK, MEHRAN DEVELOPMENT CORPORATION. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers (with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other))

From: 1/13/16, 3/23/16, 5/25/16, 7/27/16, 8/31/16, 11/2/16, 2/1/17, 5/3/17

EH__

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***** VACATED *** REASON: CONTINUED TO 12/13/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

BLACK AND WHITE INK	Pro Se
MEHRAN DEVELOPMENT	Pro Se
BLACK AND WHITE BILLING	Pro Se
BWI CONSULTING, LLC	Pro Se
Black and White, Inc.	Pro Se

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CONT... Douglas J Roger, MD, Inc., A Professional Corporat

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Plaintiff(s):

A. Cisneros

Represented By
D Edward Hays
Chad V Haes

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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6:13-26277 Charles Frederick Biehl

Chapter 7

Adv#: 6:15-01265 Pringle v. Clements-Biehl

#22.00 CONT Pre-Trial Conference RE: [1] Adversary case 6:15-ap-01265. Complaint by John P. Pringle against Rene Clements-Biehl. (Charge To Estate). (14 (Recovery of money/property - other)),(13 (Recovery of money/property - 548 fraudulent transfer))

From: 2/1/17, 3/29/17, 5/31/17, 6/7/17

EH__

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***** VACATED *** REASON: CONTINUED TO 12/20/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Frederick Biehl

Represented By
Daryl L Binkley - DISBARRED -
Steven L Bryson

Defendant(s):

Rene Clements-Biehl

Represented By
Allan D Sarver

Plaintiff(s):

John P. Pringle

Represented By
Elyza P Eshaghi
Brandon J Iskander

Trustee(s):

John P Pringle (TR)

Represented By
James C Bastian Jr
Elyza P Eshaghi

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CONT...

Charles Frederick Biehl

Brandon J Iskander
Lynda T Bui

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6:03-15174 Devore Stop A General Partners

Chapter 7

Adv#: 6:12-01498 Morschauser v. Continental Capital LLC et al

#23.00 CONT Status Conference re Order to Show Cause Why Jesse Bojorquez, American Business Investments, William Morschauser, Stephen Collias and Continental Capital, LLC, Should Not Be Sactioned for Facilitating Payment to and/or Receiving Payment for Broker Services in Contravention of this Court's August 11, 2003, Sale Order

From: 7/26/17

Also #24

EH__

Docket 1

Tentative Ruling:

09/13/2017

On August 16, 2017, the Court entered its Order Imposing Sanctions ("Sanctions Order") as to Defendant/Cross-Defendants Continental Capital, LLC, Stephen Collias, and their Counsel, for failure to comply with the deadlines imposed by the Court in its May 16, 2017, Order to Show Cause ("OSC"). The Sanctions Order included: (1) a sanction payable to the Court of \$500; and (2) attorney's fees for time spent attending the July 26, 2017, hearing and for time spent preparing declarations in support of the fee sanctions. The Court docketed receipt of the \$500 sanctions due to the Court on August 28, 2017.

On August 16, 2017, the sanctioned parties filed their request that the Court reverse its Sanctions Order as to attorney fees, and their alternative opposition to the reasonableness of the fees sought by Bojorquez and Morschauser. The fees sought by each party is set forth below:

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CONT... Devore Stop A General Partners
BOJORQUEZ FEE BREAKDOWN

Chapter 7

Hourly Rate for Lawrence Kuhlman: \$350/hr

Preparation for Status Conference, including call with client re: same – 1.7 hours

Travel to/Attendance at Status Conference – 3.9 hours

Draft Declaration re: Fees - .3 hours

Total: 5.9 hour x 350 = \$2,065

MORSCHAUSER FEE BREAKDOWN

Hourly Rate for Reid Winthrop: \$595

Preparation for Status Conference, including call with client re: same – 2.8 hours

Travel to/Attendance at Status Conference - 4.3 hours

Draft Declaration re: Fees - .5 hours

Total: 7.6 hours x \$595 = \$4,522 (Note: a miscalculation of the summation resulted in a request of \$4,581.50 for 7.7 hours in the Winthrop Declaration).

As a threshold matter, the sanctioned parties seek reversal of the fee sanctions award. However, there is no authority or analysis provided as to why the modification of the Court's sanctions award is appropriate under Rule 60. Separately, the Court is not satisfied that the explanation for why the error occurred would warrant setting aside of the sanctions award. Additionally, although the sanctioned parties argue that the "Status Conference" on the OSC would have occurred with or without the error, the Court disagrees that no time was wasted. In particular, the late filing of the responsive pleading by the sanctioned parties necessitated a further hearing for the other parties to reply in order to provide the Court and parties with all of the briefing to permit an informed discussion regarding the bounds of an evidentiary hearing.

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CONT... Devore Stop A General Partners

Chapter 7

Finally, as to the fees requested, the Court finds that the billing rates are reasonable and the sanctioned parties have provided no evidence to controvert the reasonableness of the hourly rates. However, the Court shall reduce the fee requests for travel time and time expended in preparation for the July 26 hearing, based on reasonableness of the time entries, reducing 3 hours for Mr. Winthrop and 1.5 hours for Mr. Kuhlman, for a total reduction of \$1,758 as to Mr. Winthrop's fees and a reduction of \$525 as to Mr. Kuhlman.

Thus, Mr. Kuhlman's fee shall be reduced by \$525 to \$1,540, and Mr. Winthrop's fee shall be reduced by \$1,785 to \$2,737.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Devore Stop

Represented By
Hutchison B Meltzer

Devore Stop A General Partners

Represented By
Arshak Bartoumian - DISBARRED -
Newton W Kellam

Defendant(s):

American Business Investments

Represented By
Lawrence J Kuhlman
Autumn D Spaeth ESQ

Mohammed Abdizadeh

Pro Se

Jesse Bojorquez

Represented By
Lawrence J Kuhlman
Autumn D Spaeth ESQ

Continental Capital LLC

Represented By
Cara J Hagan

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2:00 PM

CONT... Devore Stop A General Partners

Chapter 7

Stephen Collias

Represented By
Cara J Hagan

Plaintiff(s):

William G Morschauser

Represented By
Hutchison B Meltzer
Reid A Winthrop

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, September 13, 2017

Hearing Room 303

2:00 PM

6:03-15174 Devore Stop A General Partners

Chapter 7

Adv#: 6:12-01498 Morschauser v. Continental Capital LLC et al

#24.00 CONT Status Conference RE: [1] Complaint by William G Morschauser against Continental Capital LLC , Stephen Collias , Jesse Bojorquez , American Business Investments , Mohammed Abdizadeh . (91 (Declaratory judgment)) , (72 (Injunctive relief - other))

HOLDING DATE

From: 3/11/15, 5/20/15, 7/29/15, 12/16/15, 2/3/16, 3/16/16, 5/11/16, 8/31/16, 11/2/16, 11/16/16, 3/8/17, 6/7/17, 7/26/17

Also #23

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Devore Stop

Represented By
Hutchison B Meltzer

Devore Stop A General Partners

Represented By
Arshak Bartoumian - DISBARRED -
Newton W Kellam

Defendant(s):

American Business Investments

Represented By
Lawrence J Kuhlman
Autumn D Spaeth ESQ

Mohammed Abdizadeh

Pro Se

Jesse Bojorquez

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, September 13, 2017

Hearing Room 303

2:00 PM

CONT... Devore Stop A General Partners

Chapter 7

Lawrence J Kuhlman
Autumn D Spaeth ESQ

Continental Capital LLC

Represented By
Cara J Hagan

Stephen Collias

Represented By
Cara J Hagan

Plaintiff(s):

William G Morschauser

Represented By
Hutchison B Meltzer
Reid A Winthrop

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

10:00 AM

6:14-11765 Denise Barrow

Chapter 7

#1.00 CONT OSC re Order To Docket Information In Support Of Bodily Detention Request Under Seal; And order Issuing Bodily Detention Request for Marla Perez

From: 8/24/17

EH__

Docket 68

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Denise Barrow

Pro Se

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:30 PM

6:11-43583 Richard H Brown, Jr.

Chapter 13

Adv#: 6:17-01029 Cohen v. Bank of America, NA et al

#2.00 CONT Status Conference Re Complaint by Amrane Cohen against Bank of America, NA, Ocwen Loan Servicing, LLC, New Penn Financial LLC dba Shellpoint Mortgage Servicing: Nature of Suit: 14 - Recovery of money/property - other, 02 - Other: e.g. other actions that would have been brought in state court if unrelated to bankruptcy, 91 - Declaratory judgment

From: 4/6/17, 5/11/17, 6/8/17, 8/17/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard H Brown Jr.

Represented By
Gary J Holt

Defendant(s):

Ocwen Loan Servicing, LLC

Pro Se

Bank of America, NA

Pro Se

Plaintiff(s):

Amrane Cohen

Pro Se

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:30 PM

6:12-19250 Domingo R Solorzano and Maria Josefina Solorzano

Chapter 13

#3.00 Motion RE: Objection to Claim Number 6 by Claimant Navient CFC

EH__

Docket 66

Tentative Ruling:

09/14/2017

Background:

On April 13, 2012 ("Petition Date"), Domingo and Maria Solorzano (collectively, the "Debtors") filed for chapter 13 relief. Amrane Cohen is the duly appointed chapter 13 trustee ("Trustee").

On July 11, 2017, the Trustee filed an Objection to Claim No. 6 (the "Objection") of Navient CFC (the "Claimant"). Claimant filed no opposition.

Claim #: 6

Amount: \$5,821.56

Objection:

The Trustee objects on the basis that the proof of claim of Claimant was filed more than four years after the claims bar date and after payments under the plan have been completed.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:30 PM

CONT... Domingo R Solorzano and Maria Josefina Solorzano

Chapter 13

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

Here, the docket reflects that the claims bar date was August 22, 2012. Claimant filed its proof of claim on June 5, 2017.

TENTATIVE RULING

The Court agrees with the Trustee's Objection that the claim must be disallowed based on the Claimant's failure to timely file a proof of claim. Additionally, the failure of Claimant to file any response or opposition is deemed as consent to the granting of the relief requested pursuant to LBR 9013-1(h).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Domingo R Solorzano

Represented By
William E Windham

Joint Debtor(s):

Maria Josefina Solorzano

Represented By
William E Windham

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:30 PM

CONT... Domingo R Solorzano and Maria Josefina Solorzano

Chapter 13

Movant(s):

Amrane (RS) Cohen (TR)

Pro Se

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:30 PM

6:12-23454 Edgar Villegas

Chapter 13

#4.00 Motion to vacate dismissal

EH__

Docket 121

Tentative Ruling:

09/14/2017

BACKGROUND

On May 31, 2012, Edgar Villegas ("Debtor") filed for chapter 13 relief. Amrane Cohen is the duly appointed chapter 13 trustee ("Trustee"). On December 28, 2016, the Trustee filed a motion to dismiss the case due to a material default ("MTD"). Specifically, the MTD was based on the failure to provide tax returns and any net refunds for 2012, 2013, 2014, and 2015. The Debtor filed no opposition. At the hearing, the Trustee indicated there had been no opposition and noted that the Debtor's plan was now entering month 65 (i.e. beyond the statutory period permitted for a chapter 13 plan's completion). Based thereon, the Court dismissed the case. On August 11, 2017, the Debtor moved this Court to vacate the dismissal ("Motion").

The Debtor asserts that his prior counsel did not inform him of the need to submit tax returns and indicates that around the time that the case was dismissed, his wife passed away and he did not learn of the dismissal until he received notice of the dismissal from the Court. Since learning of the dismissal, Debtor's counsel asserts that he has the outstanding tax returns which reflects no refunds have been received by the Debtor and that he is prepared to forward those to the Trustee. Additionally, the Debtor's counsel is holding certified funds in the amount of \$5,660.95 to tender towards completion of the plan.

On August 17, 2017, the Trustee filed comments indicating his recommendation that the Motion be granted conditioned on the following:

1. Debtor providing the 2012, 2013, 2014, and 2015 tax returns; and
2. Payment of the remaining plan base balance of \$3,805.38 (separate from the \$5,660.95 in certified funds which is also necessary to pay the plan off).

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Thursday, September 14, 2017

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12:30 PM

CONT... Edgar Villegas

Chapter 13

TENTATIVE RULING

Given that the statutory plan period has expired, the Trustee's conditions are extremely reasonable. The Court's tentative ruling is to GRANT the Motion on fulfillment of the Trustee's conditions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Edgar Villegas

Represented By
Ivette Teran
Luis G Torres

Movant(s):

Edgar Villegas

Represented By
Ivette Teran
Luis G Torres

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:30 PM

6:12-23627 Michael L Anderson

Chapter 13

#5.00 Motion for Authority to Refinance Real Property

Also #6

EH__

Docket 160

Tentative Ruling:

09/14/2017

Service: Improper. The Motion does not reflect service on Fannie Mae, to which JPMorgan transferred its interest in the lien on the Property as reflected in the claims register on March 25, 2014. Fannie Mae should have been served at the address indicated on the claims register and in accordance with FRBP 7004. Additionally, Wells Fargo was also not served with the Motion.

Separately, the Notice of Motion incorrectly indicates that service was in accordance with LBR 9013-1(q) which regards motions to convert or dismiss, and not, motions to refinance which requires notice under LBR 9013-1(p) and (w). Finally, affected parties are not named in the Notice of Motion.

Background:

Debtor seeks authority to refinance the real property located at 1454 Sycamore Lane in San Bernardino, CA 92408 ("Property"). By his Motion, the Debtor seeks authority to borrow \$90,000 from Private Money Lenders, Inc. The following will be paid from proceeds of the loan: a portion of the Wells Fargo lien (\$4,432.02) on the Property which was bifurcated pursuant to this Court's 6/19/2017 Order on Motion to Value (Docket No. 152). There will remain \$60,566.45 after payment of the Wells Fargo lien.

Trustee Comments:

The Trustee recommends **disapproval** for the following reasons:

The Trustee believes based on documents filed in the case that the Debtor still owes

**United States Bankruptcy Court
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Thursday, September 14, 2017

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12:30 PM

CONT... Michael L Anderson

Chapter 13

\$4,728.28 in arrears to Fannie Mae (the first lien on the Property). When the case was originally filed, Fannie Mae's proof of claim indicated that it was owed \$26,776.09 in arrears. (Claim No. 8).

Debtors' Response

The Debtor has made no response to the Trustee's concern.

TENTATIVE RULING

The Court's tentative ruling is to DENY the Motion without prejudice based on the foregoing.

Party Information

Debtor(s):

Michael L Anderson

Represented By
Javier H Castillo

Movant(s):

Michael L Anderson

Represented By
Javier H Castillo

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:30 PM

6:12-23627 Michael L Anderson

Chapter 13

#6.00 Trustee's Motion to Dismiss Case Due to Material Default or to Reconvert Case to Chapter 7

Also #5

EH__

Docket 154

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael L Anderson

Represented By
Javier H Castillo

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:30 PM

6:12-31792 Jesse Delgado and Rocio Delgado

Chapter 13

#7.00 Application for Compensation for Michael Smith, Debtor's Attorney, Fee: \$750.00, Expenses: \$0.00

EH__

Docket 67

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/15/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesse Delgado

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Rocio Delgado

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Movant(s):

Rocio Delgado

Represented By
Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Michael Smith
Michael Smith
Michael Smith
Sundee M Teeple
Sundee M Teeple

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:30 PM

CONT... Jesse Delgado and Rocio Delgado

Chapter 13

Jesse Delgado

Sundee M Teeple

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:30 PM

6:12-34481 James J Alvarado and Pamela P Alvarado

Chapter 13

#8.00 CONT Application for Compensation/Supplemental Fees for Sundee M Teeple, Debtor's Attorney, Fee: \$600.00

From: 8/17/17

EH__

Docket 106

Tentative Ruling:

09/14/2017

The hearing on this Supplemental Fee Application was continued for the Applicant to provide supplemental evidence in support of its fee request. The Court notes at the outset that the supplement, which is not admissible evidence, includes 1 hour for "attorney representation at hearing" for the May 2, 2017, hearing. However, the Court reviewed the record of the May 2, 2017, hearing and found that there was, in fact, no appearance by counsel for the Debtor at that hearing. For that reason, and as otherwise noted on the record at the 8/17/17 hearing on the Application, the Court is inclined to DENY the Application in its entirety.

APPEARANCES REQUIRED, or Applicant may not appear and be deemed to submit to the tentative.

Party Information

Debtor(s):

James J Alvarado

Represented By

Dale Parham - INACTIVE -

Michael Smith

Sundee M Teeple

Cynthia L Gibson

Joint Debtor(s):

Pamela P Alvarado

Represented By

Dale Parham - INACTIVE -

**United States Bankruptcy Court
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Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:30 PM

CONT... James J Alvarado and Pamela P Alvarado

Chapter 13

Michael Smith
Sundee M Teeple
Cynthia L Gibson

Movant(s):

Pamela P Alvarado

Represented By
Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Michael Smith
Michael Smith
Michael Smith
Michael Smith
Sundee M Teeple
Sundee M Teeple
Sundee M Teeple
Sundee M Teeple
Cynthia L Gibson
Cynthia L Gibson
Cynthia L Gibson
Cynthia L Gibson

James J Alvarado

Represented By
Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Michael Smith
Michael Smith
Michael Smith
Michael Smith
Michael Smith
Sundee M Teeple
Sundee M Teeple
Sundee M Teeple

**United States Bankruptcy Court
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Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:30 PM

CONT... James J Alvarado and Pamela P Alvarado

Chapter 13

Sundee M Teeple
Sundee M Teeple
Cynthia L Gibson
Cynthia L Gibson
Cynthia L Gibson
Cynthia L Gibson
Cynthia L Gibson

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:31 PM

6:12-20717 Tang Pham and Kina Pham

Chapter 13

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

From: 7/27/17

EH__

Docket 73

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tang Pham

Represented By
Carey C Pickford

Joint Debtor(s):

Kina Pham

Represented By
Carey C Pickford

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:31 PM

6:12-20822 Vito Bommarito and Sandra Bommarito

Chapter 13

#10.00 Trustee's Motion to Dismiss Case

EH__

Docket 59

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vito Bommarito

Represented By
C Scott Rudibaugh

Joint Debtor(s):

Sandra Bommarito

Represented By
C Scott Rudibaugh

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:31 PM

6:12-29475 Jesus Sandoval

Chapter 13

#11.00 CONT Trustee's Motion to Dismiss Case

From: 8/17/17

EH__

Docket 99

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/30/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus Sandoval

Represented By
Rebecca Tomilowitz

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:31 PM

6:12-29624 Thomas D Felch and Michelle M Felch

Chapter 13

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

Also #13

EH__

Docket 121

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas D Felch

Represented By
Michael F Chekian

Joint Debtor(s):

Michelle M Felch

Represented By
Michael F Chekian

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
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Thursday, September 14, 2017

Hearing Room 303

12:31 PM

6:12-29624 Thomas D Felch and Michelle M Felch

Chapter 13

#13.00 CONT Trustee's Motion to Dismiss Case Due to Material Default

From: 8/17/17

Also #12

EH__

Docket 118

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas D Felch

Represented By
Michael F Chekian

Joint Debtor(s):

Michelle M Felch

Represented By
Michael F Chekian

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)
Amrane (SA) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:31 PM

6:12-31718 Michael Anthony Estrada and Laura Estrada

Chapter 13

#14.00 Trustee's Motion to Dismiss Case Due to Material Default

EH__

Docket 106

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Anthony Estrada

Represented By
John F Brady
Lisa H Robinson

Joint Debtor(s):

Laura Estrada

Represented By
John F Brady
Lisa H Robinson

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)
Amrane (SA) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:31 PM

6:12-33658 Jose Luis Navarro and Alma Gloria Navarro

Chapter 13

#15.00 Trustee's Motion to Dismiss Case

EH__

Docket 74

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/30/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Luis Navarro

Represented By
Todd L Turoci

Joint Debtor(s):

Alma Gloria Navarro

Represented By
Todd L Turoci

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:31 PM

6:12-36623 Michael Duane Cummings and Sauna Denise Cummings

Chapter 13

#16.00 CONT Trustee's Motion to Dismiss Case

From: 8/17/17

EH__

Docket 119

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Duane Cummings

Represented By
Devin Sawdayi

Joint Debtor(s):

Sauna Denise Cummings

Represented By
Devin Sawdayi

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:32 PM

6:16-18182 Douglas Edward Goodman and Anne Louise Goodman

Chapter 13

#17.00 CONT Motion RE: Objection to Claim Number 11 by Claimant Natasha Reynoso and Mark Reynoso
HOLDING DATE

From: 5/4/17, 8/24/17, 8/31/17

EH__

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Movant(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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12:32 PM

CONT... Douglas Edward Goodman and Anne Louise Goodman

Chapter 13

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:32 PM

6:16-18182 Douglas Edward Goodman

Chapter 13

Adv#: 6:16-01277 Reynoso v. Goodman et al

#18.00 Motion of Cross-Defendants Jose Pastora and Theresa Mann to Dismiss Cross-Complaint

Also #19 & #20

EH__

Docket 40

Tentative Ruling:

09/14/2017

BACKGROUND

On September 12, 2016, Douglas and Anne Goodman (collectively, "Debtors") filed their petition for chapter 13 relief.

On November 11, 2016, Mark and Natasha Reynoso (collectively, "Plaintiffs") filed a complaint seeking determination of the dischargeability of a debt pursuant to 11 U.S.C. § 523(a)(2)(A) (the "Complaint"). Specifically, Plaintiffs allege that in 2015, they purchased real property located at 1656 West Lisbon Street in Upland, CA (the "Property") from the Debtors, and that a sale was consummated on the misrepresentations of the Debtors' agent, Theresa Mann, that the Property was 3,231 square feet while Plaintiffs assert that the Property is actually 2,713 square feet (or a difference of 518 square feet). Plaintiffs also assert that they were led to believe that a water leak in the upstairs bathroom had been repaired. Plaintiffs allege that the Debtors knew or should have known that their agent was making false and misleading representations to Plaintiffs. The initial Complaint was dismissed on March 31, 2017, and a first amended complaint filed on April 19, 2017 (the "FAC").

On June 5, 2017, the Debtors filed a Cross-Complaint against Jose Pastora and Theresa Mann (collectively, "Cross-Defendants"), their former real estate agents who they allege were hired to handle the sales transactions and who made the alleged misrepresentations (the "Cross-Complaint").

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Courtroom 303 Calendar**

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12:32 PM

CONT... **Douglas Edward Goodman**

Chapter 13

On July 18, 2017, the Cross-Defendants filed a Motion to Dismiss the Cross-Complaint ("Motion"). On August 31, 2017, the Debtors filed opposition to the Motion ("Opposition"), and on September 7, 2017, the Cross-Defendants filed their reply ("Reply").

Civil Rule 12(b)(6) standards

Under Civil Rule 12(b)(6), made applicable in adversary proceedings through Rule 7012, a bankruptcy court may dismiss a complaint if it fails to "state a claim upon which relief can be granted." In reviewing a Civil Rule 12(b)(6) motion, the trial court must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). However, the trial court need not accept as true conclusory allegations in a complaint or legal characterizations cast in the form of factual allegations. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); *Hartman v. Gilead Scis., Inc. (In re Gilead Scis. Sec. Litig.)*, 536 F.3d 1049, 1055 (9th Cir. 2008).

To avoid dismissal under Civil Rule 12(b)(6), a plaintiff must aver in the complaint "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955). It is axiomatic that a claim cannot be plausible when it has no legal basis. A dismissal under Civil Rule 12(b)(6) may be based either on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. *Johnson v. Riverside Healthcare Sys.*, 534 F.3d 1116, 1121 (9th Cir.2008).

DISCUSSION

The primary thrust of the Motion is that a settlement agreement between the Plaintiffs and Cross-Defendants was approved by the Superior Court of San Bernardino ("State Court") on April 4, 2017 (the "Settlement Order"). The Settlement Order purports to bind the Debtors to an agreement that the Cross-Defendants cannot be sued for indemnity in the instant matter.

A [bankruptcy] petition ... operates as a stay, applicable to all entities, of:

- The commencement **or continuation**, including the issuance or employment

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of process, of a judicial, administrative, or other action or 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. 11 U.S.C. § 362(a)(1); and

- Any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate. 11 U.S.C. § 362(a)(3).

Violations of the automatic stay are void. *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992). Here, the Court finds that the continuation of the State Court litigation by the Plaintiffs and Respondents without first having sought relief from stay from this Court to continue the litigation resulted in a violation of the stay under both §§ 362(a)(1) and (a)(3). Moreover, the Application for, and thus, entry of the Settlement Order, effectuated deprivation of the estate's right to pursue an indemnity claim against Respondents in violation of 11 U.S.C. § 362(a)(3). Based on these violations and the failure of Plaintiffs and Respondents to seek obtain relief from stay, the Settlement Order appears to violate the automatic stay, notwithstanding the fact that the Debtors may have received notice of the Application to the State Court. The plain fact is that whether or not the Debtors received notice that Respondents and Plaintiffs were seeking to enter into a settlement in State Court, that Debtors' rights to respond/object cannot have been abridged by State law because the automatic stay operated to toll any rights of the Debtors under state law during the pendency of the bankruptcy case. Thus, to the extent that the Settlement Order purported to curtail the Debtors' rights to pursue indemnification, the Settlement Order must be void.

Additionally, the Court underscores that the docket reflects no motion for relief from stay by either the Plaintiffs or the Cross-Defendants seeking to permit them to continue the action against the Debtors in the State Court. Based on the foregoing, the Court is inclined to DENY the Motion to the extent it seeks to dismiss the Cross-Complaint as violative of the Settlement Order.

As to the alternative grounds for dismissal, the Cross-Defendants assert that the Cross-Complaint does not contain sufficient facts to maintain actions for indemnification. However, although the Cross-Defendants are correct that read in isolation the Cross-Complaint does not contain sufficient factual content to survive a motion to dismiss, the Cross-Complaint references the allegations of the FAC regarding false representations made by Theresa Mann regarding the Property.

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Separately, as to Joe Pastora, the Court notes that neither the FAC nor the Cross-Complaint make any specific allegations regarding Joe Pastora's actions or conduct to sustain any cause of action against him.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to DENY the Motion as to Respondent's argument that the Settlement Order bars litigation against the Respondents.

Separately, the Court is inclined to GRANT the Motion without prejudice as to Joe Pastora for failure to state a claim; and GRANT the Motion as to Theresa Mann, without prejudice to Debtors right to amend the Cross-Complaint to more specifically incorporate or otherwise restate the allegations contained in the FAC regarding Ms. Mann's alleged misrepresentations to the Plaintiffs.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Defendant(s):

Theresa Mann

Represented By
Andrew L Leff

Jose Pastora

Represented By
Andrew L Leff

Douglas Edward Goodman

Represented By
Edward T Weber

Anne Louise Goodman

Represented By
Edward T Weber

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Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Movant(s):

Jose Pastora

Represented By
Andrew L Leff

Theresa Mann

Represented By
Andrew L Leff

Plaintiff(s):

Mark & Natasha Reynoso

Represented By
Michael J Hemming

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-18182 Douglas Edward Goodman

Chapter 13

Adv#: 6:16-01277 Reynoso v. Goodman et al

#19.00 CONT Status Conference RE: [26] Crossclaim by Anne Louise Goodman, Douglas Edward Goodman against all defendants

From: 8/31/17

Also #18 & #20

EH__

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Defendant(s):

Theresa Mann

Represented By
Andrew L Leff

Jose Pastora

Represented By
Andrew L Leff

Douglas Edward Goodman

Represented By
Edward T Weber

Anne Louise Goodman

Represented By
Edward T Weber

Joint Debtor(s):

Anne Louise Goodman

Represented By

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Chapter 13

Samer A Nahas
Edward T Weber

Plaintiff(s):

Mark & Natasha Reynoso

Represented By
Michael J Hemming

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-18182 Douglas Edward Goodman

Chapter 13

Adv#: 6:16-01277 Reynoso v. Goodman et al

#20.00 CONT Status Conference RE: [13] Amended Complaint by Michael J Hemming on behalf of Mark & Natasha Reynoso against Anne Louise Goodman, Douglas Edward Goodman. (RE: related document(s)1 Adversary case 6:16-ap-01277. Complaint by Mark & Natasha Reynoso against Douglas Edward Goodman, Anne Louise Goodman. false pretenses, false representation, actual fraud) filed by Plaintiff Mark & Natasha Reynoso)
(Holding Date)

From: 5/4/17, 8/24/17, 8/31/17

Also #18 & #19

EH__

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Defendant(s):

Theresa Mann

Represented By
Andrew L Leff

Jose Pastora

Represented By
Andrew L Leff

Douglas Edward Goodman

Represented By
Edward T Weber

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Anne Louise Goodman

Represented By
Edward T Weber

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Plaintiff(s):

Mark & Natasha Reynoso

Represented By
Michael J Hemming

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:14-19913 Martin Caballero and Clementina Caballero

Chapter 13

#21.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

EH__

Docket 100

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martin Caballero

Represented By
Luis G Torres

Joint Debtor(s):

Clementina Caballero

Represented By
Luis G Torres

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:15-15622 Anita R Giroth

Chapter 13

#22.00 Motion to vacate dismissal

EH__

Docket 51

Tentative Ruling:

09/14/2017

BACKGROUND

On June 2, 2015, Anita Giroth ("Debtor") filed her petition for chapter 13 relief. Rod Danielson is the duly appointed chapter 13 trustee ("Trustee"). On July 6, 2017, a hearing was held on the Trustee's Motion to Dismiss the Debtor's Case ("MTD"). The MTD requested dismissal for failure by the Debtor to submit 2016 state tax returns to the Trustee. At the hearing, there was no appearance on behalf of the Debtor and no opposition to the MTD. An order dismissing the case was entered on July 25, 2017.

On August 11, 2017, the Debtor filed her motion to vacate dismissal ("Motion"). On August 15, 2017, the Trustee filed comments recommending approval on the following conditions:

1. Immediate forwarding to the Trustee of a copy of the 2016 return; and
2. Debtor to be fully current by the hearing date where Debtor's counsel must be able to certify he is holding the \$2,714.80 necessary to come current (funds to be forwarded to the Trustee after the order vacating the dismissal is entered)

TENTATIVE RULING

The Court finds the Trustee's conditions reasonable. On representation by the Debtor at the hearing that the Debtor has complied with the Trustee's conditions, the Court's tentative ruling is to GRANT the Motion and reinstate the case.

APPEARANCES REQUIRED.

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CONT... Anita R Giroth

Chapter 13

Party Information

Debtor(s):

Anita R Giroth

Represented By
Arturo A Burga

Movant(s):

Anita R Giroth

Represented By
Arturo A Burga

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Arturo A Burga

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6:17-13072 Ricardo Menendez

Chapter 13

#23.00 Application for Compensation Declaration of Attorney for Debtor in Support Thereof with proof of service for Sunita N Sood, Debtor's Attorney, Period: 6/8/2017 to 7/5/2017, Fee: \$750.00, Expenses: \$0.00.

EH__

Docket 39

Tentative Ruling:

09/14/2017

DISCUSSION

Applicant seeks \$750 in fees for opposing and reaching an APO on a motion for relief from stay. The Chapter 13 Trustee recommends that Applicant receive \$525 as the usual and customary fee for similar tasks. The Court notes that there is no set "no look fee" for an opposition to a motion for relief from stay. However, the Trustee has previously recommended \$550 as the usual and customary fee for similar tasks and in the interests of consistency the Court is amenable to allowing fees in the amount of \$550.

Here, the Court finds that \$550 is reasonable. In particular, when comparing the opposition and stipulation on a motion for relief from stay to similar tasks set forth in the "No Look Fee" schedule, the schedule contemplates \$750 or more for motions filed by the Debtor such as a motion to extend/impose stay and a motion to avoid lien under §522(f). The schedule provides only one "no look fee" for an opposition - \$350 for opposing a motion to dismiss. In recommending \$550/\$525, the Trustee has properly recognized that opposing a motion for relief from stay and coming to agreement with opposing counsel on terms of an APO requires more than opposition to a motion to dismiss but less than the work required to file and serve a motion seeking affirmative relief. Finally, the Application itself contains no explanation to indicate that resolution of the Motion for Relief from Stay was out of the ordinary such as to justify a fee above the usual and customary fee being awarded by the Trustee for opposition to motions for relief from stay.

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CONT... Ricardo Menendez

Chapter 13

TENTATIVE RULING

Based on the foregoing, the Court is inclined to allow fees in the amount of \$550 as set forth above.

APPEARANCES REQUIRED, or Applicant may not appear and be deemed to submit on the tentative.

Party Information

Debtor(s):

Ricardo Menendez

Represented By
Sunita N Sood

Movant(s):

Ricardo Menendez

Represented By
Sunita N Sood

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14150 Kaleo Mehia Roque Leopoldo and Andrea Ann Leopoldo

Chapter 13

#24.00 Stipulation By BOPTI Federal Credit Union and Debtor for Adequate Protection Order (Non-Dischargeability of Debt)

EH__

Docket 25

***** VACATED *** REASON: CONTINUED TO 9/28/17 AT 12:30 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kaleo Mehia Roque Leopoldo

Represented By
Nicholas M Wajda

Joint Debtor(s):

Andrea Ann Leopoldo

Represented By
Nicholas M Wajda

Movant(s):

BOPTI Federal Credit Union

Represented By
A. Lysa Simon

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15427 Cary Lee Surface and Amber Dawn Surface

Chapter 13

#25.00 Motion RE: Objection to Claim Number 2-1 by Claimant Nissan Motor Acceptance Corporation

Also #26 & #27

EH__

Docket 15

*** VACATED *** REASON: ORDER ENTERED 9/7/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cary Lee Surface

Represented By
Lionel E Giron
Kevin Tang

Joint Debtor(s):

Amber Dawn Surface

Represented By
Lionel E Giron
Kevin Tang

Movant(s):

Amber Dawn Surface

Represented By
Lionel E Giron
Kevin Tang

Cary Lee Surface

Represented By
Lionel E Giron
Kevin Tang

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15427 Cary Lee Surface and Amber Dawn Surface

Chapter 13

#26.00 Motion RE: Objection to Claim Number 6-1 by Claimant Santander Consumer USA Inc.

Also #25 & #27

EH__

Docket 16

*** VACATED *** REASON: ORDER ENTERED 9/7/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cary Lee Surface

Represented By
Lionel E Giron
Kevin Tang

Joint Debtor(s):

Amber Dawn Surface

Represented By
Lionel E Giron
Kevin Tang

Movant(s):

Amber Dawn Surface

Represented By
Lionel E Giron
Kevin Tang

Cary Lee Surface

Represented By
Lionel E Giron
Kevin Tang

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15427 Cary Lee Surface and Amber Dawn Surface

Chapter 13

#27.00 CONT Confirmation of Chapter 13 Plan

From: 8/3/17

Also #25 & #26

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cary Lee Surface

Represented By
Lionel E Giron
Kevin Tang

Joint Debtor(s):

Amber Dawn Surface

Represented By
Lionel E Giron
Kevin Tang

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15867 Silvia Alvarez

Chapter 13

#28.00 CONT Confirmation of Chapter 13 Plan

From: 8/17/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Silvia Alvarez

Represented By
Filemon Kevin Samson III

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15978 Conchita C Ang

Chapter 13

#29.00 Application for Legal Determination/Clarification of Automatic Stay Under Federal Bankruptcy Code 11 U.S.C. §362, Automatic Stay

CASE DISMISSED 8/31/17

Also #30

EH__

Docket 12

Tentative Ruling:

09/14/2017

BACKGROUND

On July 18, 2017, Conchita Ang ("Debtor") filed her petition for chapter 13 relief. The Debtor's petition commenced her second case pending within the same year as Case No. 16-16362 which was dismissed for abuse on October 12, 2016.

On August 15, 2017, the Debtor filed her Application for Legal Determination/Clarification of Automatic Stay ("Application") apparently seeking an advisory opinion of the Court regarding the extent of the automatic stay in her case. The question appears to arise from the Debtor's receipt of a "Notice of Bankruptcy Case Filing" from the Court which indicates to debtors that "[u]nder certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay."

As a threshold matter, the Application does not appear to request relief that the Court can grant. In particular, the Court is not permitted to provide litigants with advisory opinions. *Golden v. Zwickler*, 394 U.S. 103, 108, 89 S. Ct. 956, 959, 22 L. Ed. 2d 113 (1969) ((T)he federal courts established pursuant to Article III of the Constitution do not render advisory opinions.). Alternatively, even if the Court were to construe the Application as a request to continue or impose the automatic stay, the Application would be deficient in that it was not served on any creditors and did not

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CONT... Conchita C Ang

Chapter 13

otherwise comply with the requirements for motions filed pursuant to LBR 9013-1.

For these reasons, and for the reasons stated in the Opposition, the Application is DENIED.

Party Information

Debtor(s):

Conchita C Ang	Pro Se
----------------	--------

Movant(s):

Conchita C Ang	Pro Se
----------------	--------

Trustee(s):

Rod (MH) Danielson (TR)	Pro Se
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6:17-15978 Conchita C Ang

Chapter 13

#30.00 Motion for Turnover of Property and: (I)To Enforce the Automatic Stay; (II)For an Order to Show Cause (OSC); (III)To Compel Compliance with the Court Order; (IV) For Sanctions

CASE DISMISSED 8/31/17

Also #29

EH__

Docket 14

Tentative Ruling:

09/14/2017

BACKGROUND

On July 18, 2017 ("Petition Date"), Conchita Ang ("Debtor") filed her petition for chapter 13 relief. The Debtor's petition commenced her second case pending within the same year as Case No. 16-16362, which was dismissed for abuse on October 12, 2016.

On August 18, 2017, the Debtor filed her Motion and Notice of Motion for Turnover of Property and: (I) To Enforce the Automatic Stay; (II) For an Order to Show Cause (OSC); (III) To Compel Compliance with the Court Order; (IV) For Sanctions ("Motion").

By her Motion, the Debtor asserts that Clear Recon Corp. and Wells Fargo Bank, N.A. violated the automatic stay by holding a foreclosure sale on the Petition Date. Although it is not clear from the Motion, the foreclosure appears to regard the property located at 2150 Horse Trail Drive in Redlands, CA 92373 (the "Property").

On August 31, 2017, Wells Fargo Bank and Clear Recon Corp. ("Respondents") filed their opposition to the Motion ("Opposition"). The Opposition asserts, in pertinent part, that: (1) a motion for relief from stay which included in rem

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relief was granted on May 18, 2017, (2) that order was recorded on August 10, 2017; and (3) that the Debtor has not asserted any actual damages.

DISCUSSION

As a threshold matter, the Court concurs that the Debtor's service of her Motion was deficient in that Respondents were not served in accordance with Rule 7004. Nevertheless, Respondents had the opportunity to file their opposition and did so timely. There appearing to be no prejudice to Respondents stemming from the deficiency in service, the Court is disinclined to deny the Motion on this basis.

The Motion seeks issuance of an OSC based on the alleged foreclosure of the Property in violation of the automatic stay.

"A 'willful violation' does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant **knew** of the automatic stay and that the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded."

Pinkstaff v. United States (In re Pinkstaff), 974 F.2d at 115 (quoting *Goichman v. Bloom* (In re Bloom), 875 F.2d 224, 227 (9th Cir.1989)) (emphasis added).

Here, the record indicates that the petition was filed at approximately 12:50 p.m. on July 18, 2017. The foreclosure sale was scheduled to begin at 1:00 p.m. that same day (although the Court notes that the Exhibit O which purportedly indicates the sale date and time was not filed with the Court). The Debtor's declaration is vague as to when she provided notice of the filing to Respondents. Her inauthenticated and inadmissible exhibits do not necessarily help her because they appear to indicate that notice was faxed by her at 1:04 p.m. at the earliest, which is after the sale began. Nevertheless, the foreclosure sale appears to be a technical violation of the stay.

In response to the Motion, the Respondents indicate an in rem order was entered in May 2017 by Judge Zurzolo. However, Respondents did not take appropriate steps to record the order in the county where the Property is located prior

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to the Petition Date (the In Rem Order was not recorded until August 10, 2017, postpetition), and as such the automatic stay was in place at the time of the foreclosure. Based on this failure by the Respondents, issuance of an OSC re: Violation of the Automatic Stay is appropriate because, notwithstanding that holding the foreclosure sale may not have been a willful violation (given the ambiguity surrounding whether Respondents received effective notice prior to holding the sale), the failure to restore title to the Property to the Debtor or to otherwise seek annulment likely constitutes a continuing violation of the stay which Respondents did not cure during the remaining pendency of the Debtor's case (Respondents do not acknowledge when they had notice of the bankruptcy but also do not dispute that they received notice at some point). *In re Wallace*, 2014 WL 1244792, at *6 (B.A.P. 9th Cir. Mar. 26, 2014)(discussing the interplay between an action for damages under 362 (k) with related orders annulling the stay).

Based on the foregoing, the Court's tentative ruling is to issue an Order to Show Cause Why:

1. The foreclosure sale should not be set aside as a void act taken in violation of the automatic stay; and
2. Why the Debtor should not be awarded actual damages under either § 362(k) or § 105(a) to compensate her for damages stemming from the violation.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Conchita C Ang	Pro Se
----------------	--------

Movant(s):

Conchita C Ang	Pro Se
----------------	--------

Trustee(s):

Rod (MH) Danielson (TR)	Pro Se
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6:17-16041 Daniel Garcia and Maria Garcia

Chapter 13

#31.00 CONT Confirmation of Chapter 13 Plan

From: 8/31/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Garcia

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Maria Garcia

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16142 Jose Guadalupe Rodriguez

Chapter 13

#32.00 Motion By United States Trustee To Dismiss Case With A Re-Filing

Also #33

EH__

Docket 10

Tentative Ruling:

09/14/2017

BACKGROUND

On July 24, 2017 ("Petition Date"), Jose Guadalupe Rodriguez (the "Debtor") filed his petition for chapter 13 relief.

On August 11, 2017, the Office of the United States Trustee ("UST") filed a Motion to Dismiss Chapter 13 Case with a Re-Filing Bar (the "Motion"). No opposition has been filed.

DISCUSSION

As set forth by the Ninth Circuit in *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999), bad faith, as cause for the dismissal of a Chapter 13 petition with prejudice, involves the application of the "totality of the circumstances" test. *In re Eisen*, 14 F.3d 469, 470 (9th Cir.1994). The Ninth Circuit has instructed courts deciding whether to dismiss a Chapter 13 petition to consider the following factors:

1. whether the debtor "misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner," *id.* (citing *In re Goeb*, 675 F.2d 1386, 1391 (9th Cir.1982));
2. "the debtor's history of filings and dismissals," *id.* (citing *In re Nash*, 765 F.2d 1410, 1415 (9th Cir.1985));
3. whether "the debtor only intended to defeat state court litigation," *id.* (citing *In re Chinichian*, 784 F.2d 1440, 1445-46 (9th Cir.1986)); and
4. whether egregious behavior is present, *In re Tomlin*, 105 F.3d 933, 937 (4th

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Jose Guadalupe Rodriguez

Chapter 13

Cir.1997); *In re Bradley*, 38 B.R. 425, 432 (Bankr.C.D.Cal.1984).

A finding of bad faith does not require fraudulent intent by the debtor.

[N]either malice nor actual fraud is required to find a lack of good faith. The bankruptcy judge is not required to have evidence of debtor ill will directed at creditors, or that debtor was affirmatively attempting to violate the law-malfeasance is not a prerequisite to bad faith.

In re Powers, 135 B.R. 980, 994 (Bankr.C.D.Cal.1991) (relying on *In re Waldron*, 785 F.2d 936, 941 (11th Cir.1986)).

Here, the UST asserts as grounds for dismissal that:

1. The Debtor filed a skeletal petition on July 24, 2017;
2. The Debtor filed three prior cases: Case No. 16-18169, Case No. 17-15323, and Case No. 99-15080, which the Debtor failed to disclose in his instant petition;
3. The Debtor's most recent prior case, Case No. 17-15323 was dismissed for failure to file information;
4. The Debtor received a discharge on December 27, 2016 and is not eligible to receive a discharge in the current case; and
5. The Debtor's master mailing matrix lists only one mortgage/foreclosure related creditor.

The UST asserts that based on the Debtor's ineligibility to a discharge, the dismissal of his prior case for failure to file documents, the failure of the Debtor to disclose prior filings in sworn statements, and the filing of the instant case seemingly for no other purpose than to frustrate creditors seeking foreclosure, dismissal with a bar is warranted.

Here, for the reasons set forth by the UST, the Court finds that cause exists to dismiss the Debtor's case. Additionally, the Debtors ineligibility for discharge and apparent attempts to file bankruptcy for the sole purpose of forestalling a foreclosure warrants a one-year bar under the Court's § 105 and § 349 authority as requested by the UST.

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CONT... Jose Guadalupe Rodriguez

Chapter 13

TENTATIVE RULING

Based on the foregoing, including the Debtor's failure to file opposition which this Court deems as consent to the granting of the Motion under LBR 9013-1(h), the Court is inclined to GRANT the Motion in its entirety.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jose Guadalupe Rodriguez	Pro Se
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Movant(s):

United States Trustee (RS)	Represented By Abram Feuerstein esq
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Trustee(s):

Rod (MH) Danielson (TR)	Pro Se
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Hearing Room 303

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6:17-16142 Jose Guadalupe Rodriguez

Chapter 13

#33.00 CONT Confirmation of Chapter 13 Plan

From: 8/31/17

Also #32

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Guadalupe Rodriguez Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Thursday, September 14, 2017

Hearing Room 303

12:32 PM

6:17-16249 Ruben Quintero Palafox, Jr.

Chapter 13

#34.00 CONT Confirmation of Chapter 13 Plan

From: 8/31/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ruben Quintero Palafox Jr.

Represented By
Yoon O Ham

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

12:32 PM

6:17-16267 Samuel T Saavedra and Suzanne M Saavedra

Chapter 13

#35.00 CONT Confirmation of Chapter 13 Plan

From: 8/31/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Samuel T Saavedra

Represented By
Michael R Totaro

Joint Debtor(s):

Suzanne M Saavedra

Represented By
Michael R Totaro

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

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6:17-16337 Ty Nicholas Garner, Sr. and Diane Lynn Garner

Chapter 13

#36.00 Confirmation of Chapter 13 Plan

EH__

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ty Nicholas Garner Sr.

Represented By
Richard E Chang

Joint Debtor(s):

Diane Lynn Garner

Represented By
Richard E Chang

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:32 PM

6:17-16338 Christopher Ramirez

Chapter 13

#37.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Ramirez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

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6:17-16346 William Robert Bakal

Chapter 13

#38.00 Confirmation of Chapter 13 Plan

EH__

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Robert Bakal

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

12:32 PM

6:17-16415 Fernando Gomez

Chapter 13

#39.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/21/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fernando Gomez

Represented By
Majid Safaie

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

12:32 PM

6:17-16418 Juana Rodriguez

Chapter 13

#40.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 8/21/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juana Rodriguez

Represented By
Alon Darvish

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:32 PM

6:17-16421 Sergio F Cisneros

Chapter 13

#41.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 8/21/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sergio F Cisneros

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-16439 Oscar Avila

Chapter 13

#42.00 Confirmation of Chapter 13 Plan

EH__

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oscar Avila

Represented By
Sanaz S Bereliani

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Courtroom 303 Calendar**

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Hearing Room 303

12:32 PM

6:17-16455 Elizabeth Jucaban Tuason

Chapter 13

#43.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elizabeth Jucaban Tuason

Represented By
Brad Weil

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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12:32 PM

6:17-16480 Adriana Brodie

Chapter 13

#44.00 Emergency motion to Vacate Dismissal and Requiring Debtor to Serve Notice of the Motion on all Creditors

Also #45

EH__

Docket 23

Tentative Ruling:

09/14/2017

BACKGROUND

On August 3, 2017 ("Petition Date"), Adriana Brodie ("Debtor") filed her petition for chapter 13 relief. Rod Danielson is the duly appointed chapter 13 trustee ("Trustee").

On August 8, 2017, the case was dismissed for failure by the Debtor to file initial schedules by the Court imposed deadline. Specifically, the Court had issued a notice on August 4, 2017, that the case would be dismissed if the Debtor did not provide a statement of social security number, electronic filing declaration, and master mailing matrix list of creditors within 72 hours. The Court clarified in a Notice to Filer that although the Statement of Social Security and Declaration of Electronic Filing had been filed, that they had not been signed. The Debtor did not correct the deficiencies and the case was dismissed.

The Debtor attempted to cure the deficiencies and filed an "Emergency Motion to Vacate Dismissal" on August 8, 2017 (the same date as the dismissal). On August 11, 2017, the Court denied the Debtor's Emergency Motion because the Debtor only cured two of the deficiencies for which the case was dismissed – having filed an amended Statement of Social Security and Electronic Filing Declaration but no creditor mailing matrix.

On August 14, 2017, the Debtor filed a second Emergency Motion to Vacate Dismissal (the "Motion"). The Trustee filed comments on August 15, 2017,

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CONT... Adriana Brodie

Chapter 13

recommending disapproval and indicated that Counsel for the Debtor has failed to provide an explanation which would warrant vacating the dismissal.

TENTATIVE RULING

The Court has confirmed with the Clerk's office that the three deficiencies which resulted in the dismissal have now been cured. However, the Debtor's case was filed as skeletal on the Petition Date and since the dismissal of the case the balance of schedules has come due.

The Court is inclined to GRANT the Motion conditioned on the Debtor filing all remaining schedules which have come due since the case was dismissed.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Adriana Brodie

Represented By
Aalok Sikand

Movant(s):

Adriana Brodie

Represented By
Aalok Sikand

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:32 PM

6:17-16480 Adriana Brodie

Chapter 13

#45.00 Confirmation of Chapter 13 Plan

CASE DISMISSED 8/8/17

Also #44

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adriana Brodie

Represented By
Aalok Sikand

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:32 PM

6:17-16536 Elena Louise Gutierrez

Chapter 7

#46.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CONVERTED TO CHAPTER 7 ON
9/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elena Louise Gutierrez

Represented By
Lionel E Giron

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
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12:32 PM

6:17-16595 Raul R Robles

Chapter 13

#47.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 9/11/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raul R Robles

Represented By
Jose Perez

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:32 PM

6:17-16599 Antoine Hossein Babai

Chapter 13

#48.00 Confirmation of Chapter 13 Plan

EH__

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antoine Hossein Babai Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
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6:17-16666 Frank Ramirez

Chapter 13

#49.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Ramirez

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:32 PM

6:17-16672 Robert Bruce Dunham

Chapter 13

#50.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Bruce Dunham

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, September 14, 2017

Hearing Room 303

12:32 PM

6:17-16683 Salvador Caridad Rodriguez

Chapter 13

#51.00 Confirmation of Chapter 13 Plan

EH__

Docket 2

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Salvador Caridad Rodriguez

Represented By
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-16699 Cindy Louise Lawson

Chapter 13

#52.00 Confirmation of Chapter 13 Plan

EH__

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cindy Louise Lawson

Represented By
Gary S Saunders

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, September 14, 2017

Hearing Room 303

12:32 PM

6:17-16706 Larry Gene Hannah and Susan Harris Hahhah

Chapter 13

#53.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 8/28/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Larry Gene Hannah

Represented By
Leslie Richards

Joint Debtor(s):

Susan Harris Hahhah

Represented By
Leslie Richards

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

12:32 PM

6:17-16707 Kathleen Flynn

Chapter 13

#54.00 Confirmation of Chapter 13 Plan

EH__

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kathleen Flynn

Represented By
Freddie V Vega

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:32 PM

6:17-16729 Anisha Christel Wilson

Chapter 13

#55.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anisha Christel Wilson

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, September 14, 2017

Hearing Room 303

12:32 PM

6:17-16669 Kalenga Patrick Munongo and Janelle Nicole Munongo

Chapter 13

#55.10 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kalenga Patrick Munongo

Represented By
Paul Y Lee

Joint Debtor(s):

Janelle Nicole Munongo

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

Rod (MJ) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, September 14, 2017

Hearing Room 303

12:33 PM

6:13-11826 Douglas Lee Blair

Chapter 13

#56.00 Trustee's Motion to Dismiss Case

EH__

Docket 57

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/7/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Lee Blair

Represented By
Michael E Clark
Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, September 14, 2017

Hearing Room 303

12:33 PM

6:13-13746 Ronald Andrew Lopez and Lisa Darlene Lopez

Chapter 13

#57.00 Trustee's Motion to Dismiss Case

EH__

Docket 151

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald Andrew Lopez

Represented By
David Lozano

Joint Debtor(s):

Lisa Darlene Lopez

Represented By
David Lozano

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
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Hearing Room 303

12:33 PM

6:13-23032 David R. Roberts and Crystal A Roberts

Chapter 13

#58.00 CONT Trustee's Motion to Dismiss Case

From: 8/17/17, 8/31/17

EH__

Docket 63

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David R. Roberts

Represented By
Javier H Castillo

Joint Debtor(s):

Crystal A Roberts

Represented By
Javier H Castillo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:33 PM

6:14-14265 Ricardo Pimentel and Maria Pimentel

Chapter 13

#59.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 8/31/17

EH__

Docket 50

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricardo Pimentel

Represented By
Tamar Terzian

Joint Debtor(s):

Maria Pimentel

Represented By
Tamar Terzian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, September 14, 2017

Hearing Room 303

12:33 PM

6:14-16606 Leslie R Williams

Chapter 13

#60.00 CONT Trustee's Motion to Dismiss Case

From: 8/17/17

EH__

Docket 128

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Leslie R Williams

Represented By
Michael Smith
Craig K Streed
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, September 14, 2017

Hearing Room 303

12:33 PM

6:15-12404 Anthony E Turkson

Chapter 13

#61.00 CONT Trustee's Motion to Dismiss Case

From: 8/17/17, 8/31/17

EH__

Docket 74

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anthony E Turkson

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Thursday, September 14, 2017

Hearing Room 303

12:33 PM

6:15-15831 William R Parker and Cheryl Parker

Chapter 13

#62.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 8/17/17

EH__

Docket 75

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William R Parker

Represented By
Julie J Villalobos

Joint Debtor(s):

Cheryl Parker

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, September 14, 2017

Hearing Room 303

12:33 PM

6:15-20998 Eric Kissell

Chapter 13

#63.00 Trustee's Motion to Dismiss Case re Delinquency

EH__

Docket 45

*** VACATED *** REASON: HEARD ON 8/17/17 AT 12:30 P.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eric Kissell

Represented By
William J Howell

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, September 14, 2017

Hearing Room 303

12:33 PM

6:16-12008 Darna Poole and Jerry Poole

Chapter 13

#64.00 Trustee's Motion to Dismiss Case

EH__

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Darna Poole

Represented By
Todd B Becker

Joint Debtor(s):

Jerry Poole

Represented By
Todd B Becker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, September 14, 2017

Hearing Room 303

12:33 PM

6:16-12347 Jose Luis Ceballos and Edelmira Castro

Chapter 13

#65.00 CONT Motion for Order Dismissing Chapter 13 Proceeding (Delinquency)

From: 8/3/17, 8/17/17

EH__

Docket 72

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Luis Ceballos

Represented By
David Lozano

Joint Debtor(s):

Edelmira Castro

Represented By
David Lozano

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Thursday, September 14, 2017

Hearing Room 303

12:33 PM

6:16-13233 Sherry Ann Beardsley

Chapter 13

#66.00 CONT Trustee's Motion to Dismiss Case

From: 8/17/17

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sherry Ann Beardsley

Represented By
Jeffrey D Larkin

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:33 PM

6:16-16909 Edward Edmund Zozaya and Georgia Parrilla Zozaya

Chapter 13

#67.00 Trustee's Motion to Dismiss Case

EH__

Docket 108

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edward Edmund Zozaya

Represented By
Dana Travis

Joint Debtor(s):

Georgia Parrilla Zozaya

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Thursday, September 14, 2017

Hearing Room 303

12:33 PM

6:16-19396 Pamela Lynn King

Chapter 13

#68.00 CONT Trustee's Motion to Dismiss Case

From: 8/3/17, 8/17/17, 8/31/17

EH__

Docket 22

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/11/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pamela Lynn King

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, September 14, 2017

Hearing Room 303

12:33 PM

6:16-20163 Sandra M. Hankins

Chapter 13

#69.00 Trustee's Motion to Dismiss Case

EH__

Docket 31

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sandra M. Hankins

Represented By
Michael Smith
Craig K Streed
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 14, 2017

Hearing Room 303

12:33 PM

6:16-20329 Gabriel Cruz

Chapter 13

#70.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/21/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gabriel Cruz

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, September 18, 2017

Hearing Room 303

2:00 PM

6:14-18549 Matthew Joseph Pautz and Alice Louise Pautz

Chapter 7

#1.00 CONT Order to Show Cause re Bodily Detention Order

From: 8/15/17

EH__

Docket 135

Party Information

Debtor(s):

Matthew Joseph Pautz

Represented By
Stephen D Brittain

Joint Debtor(s):

Alice Louise Pautz

Represented By
Stephen D Brittain

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Samuel J Romero

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 19, 2017

Hearing Room 303

10:00 AM

6:17-10088 Beatriz Esqueda

Chapter 13

#1.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Chrysler 200 LX

MOVANT: CONSUMER PORTFOLIO SERVICES, INC.

EH__

Docket 36

Tentative Ruling:

9/19/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Beatriz Esqueda

Represented By
Rebecca Tomilowitz

Movant(s):

Consumer Portfolio Services, Inc.

Represented By
Ryan M Davies

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 19, 2017

Hearing Room 303

10:00 AM

CONT... Beatriz Esqueda

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 19, 2017

Hearing Room 303

10:00 AM

6:17-15274 Jose Cruz Ramirez and Gilda Roxana Ramirez

Chapter 7

#2.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 HONDA CIVIC, VIN: 2HGF B2F5 7FH5 12704 .

MOVANT: HONDA LEASE TRUST

EH__

Docket 9

Tentative Ruling:

9/19/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Jose Cruz Ramirez

Represented By
Stephen B Mashney

Joint Debtor(s):

Gilda Roxana Ramirez

Represented By
Stephen B Mashney

Movant(s):

HONDA LEASE TRUST

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 19, 2017

Hearing Room 303

10:00 AM

CONT... Jose Cruz Ramirez and Gilda Roxana Ramirez
Vincent V Frounjian

Chapter 7

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 19, 2017

Hearing Room 303

10:00 AM

6:17-15381 Marcus Edward Kanavalov, Sr

Chapter 7

#3.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3112 Del Rey Dr. San Bernardino CA 92404

MOVANT: DITECH FINANCIAL LLC

EH__

Docket 11

Tentative Ruling:

9/19/2017

Service is Proper

Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Marcus Edward Kanavalov Sr

Pro Se

Movant(s):

Ditech Financial LLC

Represented By
Alexander K Lee

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 19, 2017

Hearing Room 303

10:00 AM

6:17-15417 Meghan McConaghy

Chapter 13

#4.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 24422 Rimview Rd., Moreno Valley, CA .

MOVANT: SUNNYMEAD RANCH PLANNED COMMUNITY ASSOCIATION

EH__

Docket 24

Tentative Ruling:

9/19/17

Discussion:

On June 29, 2017, at 7:48 a.m., Meghan McConaghy ("Debtor") filed a Chapter 13 voluntary petition. At 9:00 a.m. of the same day, Debtor's residence was foreclosed upon. At 9:58 a.m., Debtor faxed notice of her bankruptcy filing to the Riverside County Sheriff. At 3:04 p.m., Debtor faxed notice of her bankruptcy filing to Movant's counsel. The instant bankruptcy case was the second time in six months that Debtor filed bankruptcy within twenty-four hours of a scheduled foreclosure sale.

On August 11, 2017, Movant filed a motion to annul the automatic stay. On September 5, 2017, Debtor filed her opposition to the motion.

11 U.S.C. § 362(d) states:

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Tuesday, September 19, 2017

Hearing Room 303

10:00 AM

CONT...

Meghan McConaghy

Chapter 13

(d) On 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 such as by terminating, *annulling*, modifying, or condition such stay –

(emphasis added); *see also In re Schwartz*, 954 F.2d 569, 573 (9th Cir. 1992) ("If a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay, and whether violations of the stay are void or voidable is not at issue.").

The BAP, in *In re Fjeldsted*, noted the absence of a clear standard for annulment of the automatic stay. 293 B.R. 12, 21 (B.A.P. 9th Cir. 2003) ("There is less appellate clarity, however, in enunciating a test for retroactive stay relief. Inconsistent standards have thus developed, which run the gamut from such relief being justified only in 'extreme circumstances' to giving the court 'wide latitude' to 'balance the equities' on a case-by-case basis."). The BAP's most recent announcement of the standard for annulment of the automatic stay stated the following:

Determining whether cause exists to annul the stay is a case-by-case inquiry based on a balance of the equities. In conducting this inquiry the bankruptcy court, among other factors, should consider whether the creditor knew of the bankruptcy when violating the stay and whether the debtor's conduct was unreasonable, inequitable or prejudicial to the creditor.

In *Fjeldsted*, we approved additional factors for consideration in assessing the equities. The twelve nonexclusive factors are: (1) number of filings; (2) whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors; (3) a weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser; (4) the debtor's overall good

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10:00 AM

CONT...

Meghan McConaghy

Chapter 13

faith (totality of circumstances test); (5) whether creditors knew of stay but nonetheless took action, thus compounding the problem; (6) whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules; (7) the relative ease of restoring parties to the status quo ante; (8) the costs of annulment to debtors and creditors; (9) how quickly creditors moved for annulment, or how quickly debtor moved to set aside the sale or violative conduct; (10) whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief; (11) whether annulment of the stay will cause irreparable injury to the debtor; and (12) whether stay relief will promote judicial economy or other efficiencies. The Panel in *Fjeldsted* cautioned that the twelve factors are merely a framework for analysis and not a scorecard, and that in any given case, one factor may so outweigh the others as to be dispositive.

In re Estavan Capital LLC, 2015 WL 7758494 at *5 (B.A.P. 9th Cir. 2015) (citations and quotations omitted).

While *Fjeldsted* cautioned that the enumerated factors are not a scorecard, it is clear that the majority of the factors, including, in particular, Debtor's lack of good faith, weigh in favor of annulling the stay. Specifically, this is a repeat filing case, with both bankruptcy filings occurring shortly before a scheduled foreclosure sale. The evidence indicates that Movant was not informed of the bankruptcy filing prior to the foreclosure sale, and that Movant did not take further steps in violation of the automatic stay after the foreclosure sale. Finally, the property was purchased at a foreclosure sale, and harm will exist to the purchaser if the stay is not annulled.

In its opposition, Debtor cites and applies an incorrect legal standard. Relying on *In re Am. Spectrum Realty, Inc.*, 540 B.R. 730 (Bankr. C.D. Cal. 2015), Debtor argues that the *Curtis* factors apply and that the factors weigh in favor of denying the motion. The *Curtis* factors do not apply to a motion to annul the automatic stay. The case relied upon by Debtor contains two different sections, one dealing with relief from the automatic stay, and the other dealing with annulment of the automatic stay. In the

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CONT... Meghan McConaghy

Chapter 13

former, the Court cites the *Curtis* factors and, in the latter, the Court cites the *Fjeldsted* factors. Debtor's reliance on the *Curtis* factors here is misplaced.

In light of the absence of any pre-sale notice to Movant of Debtor's bankruptcy filing, and Debtor's multiple bankruptcy filings on the eve of foreclosure sales, among other reasons, the Court is inclined to GRANT the motion and ANNUL the automatic stay retroactive to the petition date.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Meghan McConaghy

Represented By
Nicholas M Wajda

Movant(s):

Sunnymead Ranch Planned

Represented By
Erin A Maloney

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 19, 2017

Hearing Room 303

10:00 AM

6:17-15478 Denise Lynn Valeski

Chapter 7

#5.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 29861 Oakbridge Dr., Sun City, CA 92586

MOVANT: JARNNE J. GARDNER

EH__

Docket 28

Tentative Ruling:

9/19/2017

Service is Proper in the circumstances

Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Denise Lynn Valeski

Represented By
Gordon L Dayton

Movant(s):

Jarnne J. Gardner

Represented By
Barry L O'Connor

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, September 19, 2017

Hearing Room 303

10:00 AM

6:17-16272 Martha Lorena Soto Jimenez

Chapter 7

#6.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 DODGE CHARGER, VIN 2C3CDXCT4EH370164 .

MOVANT: SANTANDER CONSUMER USA INC

EH__

Docket 10

Tentative Ruling:

9/19/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Martha Lorena Soto Jimenez

Represented By
Marlin Branstetter

Movant(s):

Santander Consumer USA Inc. dba

Represented By
Sheryl K Ith

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Tuesday, September 19, 2017

Hearing Room 303

10:00 AM

6:17-16554 Luis Desantiago, Jr.

Chapter 7

#7.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2011 SCION XB, VIN JTLZE4FE4B1121232 .

MOVANT: FIRST INVESTORS FINANCIAL SERVICES

EH__

Docket 14

Tentative Ruling:

9/19/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Luis Desantiago Jr. Pro Se

Movant(s):

First Investors Financial Services Represented By
Sheryl K Ith

Trustee(s):

Karl T Anderson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 19, 2017

Hearing Room 303

10:00 AM

6:17-16994 Stasha Lauran Sill

Chapter 13

#8.00 CONT Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate ANY AND ALL PERSONAL AND REAL PROPERTY

MOVANT: STASHA LAURAN SILL

From: 9/12/17

EH__

Docket 13

Tentative Ruling:

9/19/17

The Court is inclined to DENY the motion for lack of cause shown. Specifically, Debtor's previous Chapter 13 case was dismissed because: (1) Debtor was incarcerated at the time of the confirmation hearing; and (2) Debtor's proposed plan was clearly infeasible. While Debtor is no longer incarcerated, she has not yet obtained employment. As a substitution, Debtor has provided declarations from her mother and brother indicating that they will contribute more than \$7,000/month to fund her plan. The evidence submitted, however, does not substantiate the amount identified. Regarding Debtor's mother, the statement of contribution lists \$5,000/month from working as a real estate broker and \$1,000/month from music royalties. The payment statements attached, however, indicate that Debtor's receives approximately \$1,100/month from broker services and approximately \$245/month from music royalties. Regarding Debtor's brother, the statement of contribution lists net income of \$2,900/month, however, the payment statements attached, while varying in amount, indicates Debtor's brother receives less than half that amount. Therefore, Debtor has failed to establish she has the means to propose a feasible plan.

APPEARANCES REQUIRED.

Party Information

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, September 19, 2017

Hearing Room 303

10:00 AM

CONT... Stasha Lauran Sill

Chapter 13

Debtor(s):

Stasha Lauran Sill

Represented By
Paul Y Lee

Movant(s):

Stasha Lauran Sill

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, September 19, 2017

Hearing Room 303

10:00 AM

6:17-17230 Catherine Lucille Laff

Chapter 13

#9.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 2580 E TAHQUITZ CANYON WAY # 118, PALM SPRINGS, CA 92262

MOVANT: LIVEBYTHEPARK PALM SPRINGS

EH__

Docket 9

Tentative Ruling:

9/19/2017

Service: Improper

Opposition: None

Notice is improper. The notice of motion indicates opposition is due both fourteen days before the hearing, and at the hearing. Subject to opposition at the hearing, the Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. GRANT request under ¶ 9 upon recording of order. DENY requests under ¶¶ 7 and 11 for lack of cause shown.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Catherine Lucille Laff

Pro Se

Movant(s):

LivebythePark Palm Springs

Represented By
Barry L O'Connor

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 19, 2017

Hearing Room 303

2:00 PM

6:17-10724 Bausman and Company Incorporated

Chapter 11

#10.00 Application First and Final Application of Procopio, Cory, Hargreaves & Savitch LLP for Allowance and Payment of Compensation and Reimbursement of Expenses for the Period January 30 Through June 26, 2017

Also #11 & #12

EH__

Docket 81

Tentative Ruling:

9/19/2017

Application: Fees of \$106,611.30 and expenses of \$3,936.82

Opposition: None

Analysis: 11 U.S.C. § 330(a)(3) (2005) provides factors to be considered in determining the reasonableness of requested compensation.

Tentative:

On January 30, 2017, Bausman & Company, Incorporated ("Debtor") filed a Chapter 11 voluntary petition. On April 5, 2017, Procopio, Cory, Hargreaves & Savitch LLP ("Applicant") filed an employment application seeking authorization of its employment *nunc pro tunc* as of January 30, 2017. Applicant's employment application was approved by the Court on May 18, 2017.

On June 30, 2017, Applicant filed the instant fee application.

The Court has reviewed the requested fees and, noting that the absence of any opposition, considers the fees to be generally reasonable. The Court notes the following three issues with the fee application:

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2:00 PM

CONT...

Bausman and Company Incorporated

Chapter 11

- 1) Applicant requested that its employment be approved *nunc pro tunc* to January 30, 2017. Nevertheless, Applicant has billed \$1,494.30 for services provided before the authorization of its employment. These entries have been eliminated below.
- 2) Applicant has billed for the preparation of a few motions that do not appear to have been filed. In addition to three time entries on January 29, 2017, which were already counted above, Applicant lists a 1.7 hour entry on May 3, 2017, for preparation of "multiple procedural motions" and 2.5 hours on May 4, 2017, for preparation of a motion to convert. The former entry is vague and unclear; the latter entry appears excessive since the conversion motion is a form motion that required simply checking a few boxes. These two entries, totaling \$1,205, have been eliminated below.
- 3) The majority of the early billing entries of Applicant's paralegal contain lumping. While this practice appears to have been corrected in early April, the court notes that for each of the following thirteen time entries, the reasonableness of the entry cannot be ascertained, or it appears that the requested fee is unreasonable:
 - a) February 1, 2017 (\$652.50)
 - b) February 3, 2017 (\$922.50)
 - c) February 6, 2017 (\$843.75)
 - d) February 7, 2017 (\$472.50)
 - e) February 7, 2017 (\$720.00)
 - f) February 14, 2017 (\$652.50)
 - g) February 15, 2017 (\$337.50)
 - h) February 22, 2017 (\$247.50)
 - i) February 27, 2017 (\$787.50)
 - j) February 28, 2017 (\$787.50)
 - k) March 2, 2017 (\$270.00)
 - l) March 3, 2017 (\$337.50)
 - m) March 7, 2017 (\$315.00)

These thirteen entries, totaling \$7,346.25, have been eliminated in the total below.

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2:00 PM

CONT...

Bausman and Company Incorporated

Chapter 11

Overall, the Court is inclined to reduce the requested fees by \$10,045.55 for the reasons stated above. The Court is inclined to ALLOW the remaining fees of \$96,565.70 and expenses of \$3,936.82, without prejudice to Applicant's ability to seek approval of additional fees. The request for payment of allowed fees and expenses is DENIED without prejudice to Applicant's right to seek payment after conversion.

APPEARANCE REQUIRED.

Party Information

Debtor(s):

Bausman and Company Incorporated

Represented By
William A Smelko

Movant(s):

Bausman and Company Incorporated

Represented By
William A Smelko

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 19, 2017

Hearing Room 303

2:00 PM

6:17-10724 Bausman and Company Incorporated

Chapter 11

#11.00 Motion to Convert Case From Chapter 11 to 7

Also #10 & #13

EH__

Docket 83

Tentative Ruling:

9/19/17

BACKGROUND

On January 30, 2017, Bausman & Company, Incorporated ("Debtor") filed a Chapter 11 voluntary petition. Debtor has not yet filed its disclosure statement or a Chapter 11 plan. On June 30, 2017, Debtor filed a motion to convert to Chapter 7, citing inability to confirm a plan, cancellation of insurance, and ongoing operating losses.

DISCUSSION

11 U.S.C. § 1112(a) states:

- (a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless –
 - (1) the debtor is not a debtor in possession;

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Tuesday, September 19, 2017

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2:00 PM

CONT... **Bausman and Company Incorporated**

Chapter 11

- (2) the case originally was commenced as an involuntary case under this chapter; or
- (3) the case was converted to a case under this chapter other than on the debtor's request

None of the three conditions listed above are applicable in this case. When none of the three listed conditions are applicable, Debtor has an absolute right to conversion. *See, e.g., In re Dieckhaus Stationers of King of Prussia, Inc.*, 73 B.R. 969, 971 (Bankr. E.D. Pa. 1987) ("The former provision [§ 1112(a)], by its terms, gives the debtor an absolute right to convert, unless the case is governed by one of the enumerated exceptions. The legislative history confirms Congress' intent to give debtors an absolute right to convert from chapter 11 to chapter 7."). Furthermore, no opposition to Debtor's motion has been filed.

TENTATIVE RULING

The Court is inclined to GRANT the motion and CONVERT the case to Chapter 7.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Bausman and Company Incorporated

Represented By
William A Smelko

Movant(s):

Bausman and Company Incorporated

Represented By
William A Smelko

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, September 19, 2017

Hearing Room 303

2:00 PM

6:17-10724 Bausman and Company Incorporated

Chapter 11

#12.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 2/28/17, 4/11/17, 7/18/17, 7/25/17

Also #10 & #11

EH__

Docket 6

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bausman and Company Incorporated

Represented By
William A Smelko

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, September 20, 2017

Hearing Room 303

11:00 AM

6:17-10559 David Richard Hernandez

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

EH__

Docket 32

Tentative Ruling:

09/20/2017

No opposition has been filed.

Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the following administrative claims will be allowed:

Trustee Fees: \$ 1,546

APPEARANCES WAIVED. The applications for compensation are approved and the trustee and associated professionals may submit on the tentative.

Party Information

Debtor(s):

David Richard Hernandez

Represented By
William S Tilton

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, September 20, 2017

Hearing Room 303

11:00 AM

6:14-23582 Amanda L. Davis

Chapter 7

#2.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 37

Tentative Ruling:

09/20/2017

No opposition has been filed.

Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the following administrative claims will be allowed:

Trustee Fees: \$ 1,090.02

APPEARANCES WAIVED. The applications for compensation are approved and the trustee and associated professionals may submit on the tentative.

Party Information

Debtor(s):

Amanda L. Davis

Represented By
Mathew Alden

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, September 20, 2017

Hearing Room 303

11:00 AM

6:16-13091 Luz Ampelia Castro

Chapter 7

#3.00 CONT Motion to Approve Compromise of Controversy

From: 8/23/17

EH__

Docket 36

Tentative Ruling:

09/20/2017

BACKGROUND

On April 6, 2016, Luz Castro ("Debtor") filed a Chapter 7 voluntary petition. On January 9, 2017, Trustee filed an adversary proceeding against Enrique Castro ("Defendant") for: (1) avoidance of fraudulent transfer; and (2) recovery of avoided transfer. The subject of the adversary proceeding was certain real property located at 2035 Caseros Drive, San Jacinto, California 92592 (the "Property").

According to Trustee, Defendant acquired the Property shortly before the marriage of Defendant and Debtor. During the marriage, however, community property income was used to make mortgage payments, causing the community estate to acquire an interest in the Property. On March 31, 2015, Debtor transferred her interest in the property to Defendant. Trustee asserts that Debtor did not receive reasonably equivalent value for the transfer.

At the hearing on August 23, 2017, the Court required supplemental evidence regarding the value of the Property or the value of the community estate's interest in the Property to evaluate the reasonableness of the proposed settlement. On August 29,

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Wednesday, September 20, 2017

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11:00 AM

CONT... Luz Ampelia Castro

Chapter 7

2017, the Trustee filed his supplemental points and authorities. No opposition has been filed.

DISCUSSION

Fed. R. Bankr. P. Rule 9019 provides that:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

The Ninth Circuit Court of Appeals have previously outlined the factors to be considered in approving a compromise pursuant to Rule 9019: (1) the probability of success in the litigation; (2) the difficulties to be encountered in the matter of collection; (3) the complexity, expense, inconvenience and delay of litigation; and (4) the interest of creditors with deference to their reasonable. *See In re A&C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The listed factors assist the Court in determining "the fairness, reasonableness and adequacy of a proposed settlement agreement." *Id.*

The Court has reviewed the Trustee's supplemental declaration. Based on the Trustee's calculation of the estate's interest in the Property at the time of the transfer of \$17,387, and accounting for the fact that the Debtor received \$2,100 from the refinance of the Property, it appears that the Debtor's estate is entitled to approximately \$15,287 from the Property. The Trustee has indicated that the proposed settlement shall yield \$10,000 for the estate within 60 days of the Court's entry of an order approving the settlement. Here, given the likelihood that attorney's fees for prosecution of the adversary would likely exceed the difference between the settlement amount and the \$15,287 figure, the Court finds that the Trustee's judgment is reasonable and the Motion comports with the standard set forth in *In re A&C Props*, 784 F.2d 1377, 1381.

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Wednesday, September 20, 2017

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11:00 AM

CONT... Luz Ampelia Castro

Chapter 7

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the motion in its entirety.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

8/23/17

BACKGROUND

On April 6, 2016, Luz Castro ("Debtor") filed a Chapter 7 voluntary petition. On January 9, 2017, Trustee filed an adversary proceeding against Enrique Castro ("Defendant") for: (1) avoidance of fraudulent transfer; and (2) recovery of avoided transfer. The subject of the adversary proceeding was certain real property located at 2035 Caseros Drive, San Jacinto, California 92592 (the "Property").

According to Trustee, Defendant acquired the Property shortly before the marriage of Defendant and Debtor. During the marriage, however, community property income was used to make mortgage payments, causing the community estate to acquire an interest in the Property. On March 31, 2015, Debtor transferred her interest in the property to Defendant. Trustee asserts that Debtor did not receive reasonably equivalent value for the transfer.

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CONT... Luz Ampelia Castro

Chapter 7

On July 6, 2017, Trustee filed a motion to approve compromise pursuant to Fed. R. Bankr. P. Rule 9019. Trustee proposes to settle the adversary proceeding for \$10,000. On July 28, 2017, the matter was set for hearing.

DISCUSSION

Fed. R. Bankr. P. Rule 9019 provides that:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

The Ninth Circuit Court of Appeals have previously outlined the factors to be considered in approving a compromise pursuant to Rule 9019: (1) the probability of success in the litigation; (2) the difficulties to be encountered in the matter of collection; (3) the complexity, expense, inconvenience and delay of litigation; and (4) the interest of creditors with deference to their reasonable. *See In re A&C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The listed factors assist the Court in determining "the fairness, reasonableness and adequacy of a proposed settlement agreement." *Id.*

Trustee's compromise motion does not provide the information the Court requires to apply the *A&C Properties* factors or to assess the reasonableness of the settlement. First and foremost, the motion fails to identify the value of the Property or the value of the community estate's interest in the property, rendering it impossible to determining the reasonableness of the settlement amount. Additionally, the motion addresses the *A&C Properties* factors in cursory, boiler-plate language. Regarding factor (1), the motion simply states that success in the adversary is not guaranteed. Regarding factor (2), the motion states that Trustee would have to sell the Property if the adversary

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CONT... Luz Ampelia Castro

Chapter 7

proceeding were successful. Regarding factor (3), the motion states that the adversary is "not overly complex" but additional fees would result. Regarding factor (4), the motion states that the settlement would provide funds for creditors.

In the absence of any evidence regarding the value of the Property or the value of the community estate's interest in the Property, the Court cannot approve the compromise when only general arguments have made in its support.

TENTATIVE RULING

The Court is inclined to DENY the motion or CONTINUE for supplemental pleading to allow the Court to evaluate the reasonableness of the proposed settlement amount.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Luz Ampelia Castro

Represented By
George P Hobson Jr

Movant(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy
Carmela Pagay

Trustee(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy
Carmela Pagay

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Hearing Room 303

11:00 AM

6:14-17350 Dean L. Springer, Sr. and Tami Jo Springer

Chapter 7

#4.00 CONT Motion to Quash and Motion for Protective Order

From: 8/30/17

EH__

Docket 148

***** VACATED *** REASON: CONTINUED TO 11/1/17 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr.	Pro Se
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Joint Debtor(s):

Tami Jo Springer	Pro Se
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Movant(s):

Hilder & Associates	Represented By Lei Lei Wang Ekvall
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Trustee(s):

Larry D Simons (TR)	Represented By Richard A Marshack Sarah Cate Hays D Edward Hays
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11:00 AM

6:13-30133 Nabeel Slaieh

Chapter 7

#5.00 CONT Motion by Debtor Nabeel Slaieh for Sanctions against Brian C. Ostler Sr. and the Law Offices of Brian C. Ostler for Willfull Violation of the the Automatic Stay

From: 8/23/17

EH__

Docket 472

Tentative Ruling:

09/20/2017

The 8/23/17 tentative ruling required that Movant file and serve an amended notice of hearing on Brian Ostler. Movant did not appear at the 8/23/17 hearing and having now failed to comply with the Court's prior tentative ruling, the Court's tentative ruling is to deny the Motion.

8/23/17

Debtor's motion indicates that Brian Ostler was to be served by the Court via Notice of Electronic Filing. Brian Ostler, is not, however, on the Electronic Mail Notice List to receive NEF transmission. Therefore, the Court is inclined to CONTINUE the matter to September 20, 2017, at 11:00 a.m. for proper service on Brian Ostler and his law office. Movant to serve the motion and notice of hearing on Mr. Ostler and his law firm.

APPEARANCES WAIVED.

Party Information

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CONT... Nabeel Slaieh

Chapter 7

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Movant(s):

Nabeel Slaieh

Represented By
George A Saba
George A Saba

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
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Wednesday, September 20, 2017

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11:00 AM

6:13-27611 Douglas Jay Roger

Chapter 7

**#6.00 CONT Objection to Claim #17 by Revere Financial Corporation
(Holding date)**

From: 10/1/14, 11/5/14, 12/3/14, 12/15/14, 1/28/15, 4/15/15, 7/22/15, 9/23/15,
10/21/15, 11/18/15, 12/16/15, 1/13/16, 3/2/16, 5/4/16, 6/1/16, 9/28/16, 11/16/16,
2/1/17, 2/16/17, 5/3/17, 6/14/17, 6/28/17

EH__

Docket 333

***** VACATED *** REASON: CONTINUED TO 3/21/18 AT 11:00 AM**

Tentative Ruling:

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

**United States Bankruptcy Court
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Hearing Room 303

11:00 AM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

#7.00 CONT Motion to Approve Compromise Under Rule 9019 Filed Jointly by Chapter 7 Trustee and Revere Financial Corporation to Approve Settlement Contract Between Chapter 7 Trustee and Revere Financial Corporation
HOLDING DATE

From: 3/1/17, 5/3/17, 6/14/17, 6/28/17, 8/2/17

EH__

Docket 440

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/15/17**

Tentative Ruling:

6/28/17

See tentative for matter #10.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

**United States Bankruptcy Court
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Wednesday, September 20, 2017

Hearing Room 303

2:00 PM

6:17-13012 Issa M Musharbash

Chapter 7

Adv#: 6:17-01138 Musharbash et al v. Musharbbash et al

#8.00 Status conference RE: [1] Adversary case 6:17-ap-01138. Complaint to Determine Non-Dischargeability of Debt by Phillip Musharbash , Violette Musharbash against Issa M Musharbbash , Amal Musharbbash

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Issa M Musharbash

Represented By
Brian J Soo-Hoo

Defendant(s):

Amal Musharbbash

Pro Se

Issa M Musharbbash

Pro Se

Joint Debtor(s):

Amal Issa Musharbash

Represented By
Brian J Soo-Hoo

Plaintiff(s):

Violette Musharbash

Pro Se

Phillip Musharbash

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

2:00 PM

6:15-19998 Jack C Pryor

Chapter 7

Adv#: 6:17-01050 United States Trustee for the Central District of v. Pryor

#9.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01050. Complaint by United States Trustee for the Central District of California, Region 16 against Jack C Pryor. (Fee Not Required). with adversary cover sheet Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e)))

From: 5/3/17, 7/12/17, 7/26/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 10/23/17 AT 11:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jack C Pryor

Represented By
Trent Thompson

Defendant(s):

Jack C Pryor

Represented By
Linda J DeVore

Plaintiff(s):

United States Trustee for the Central

Represented By
Everett L Green

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Brandon J Iskander

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12:30 PM

6:16-13404 Alberto Plascencia and Martina Plascencia

Chapter 13

#1.00 Motion to vacate dismissal order and reinstate chapter 13 case

EH__

Docket 53

Tentative Ruling:

9/21/2017

BACKGROUND

On April 15, 2016, Alberto & Martina Plascencia ("Debtors") filed a Chapter 13 voluntary petition. On June 1, 2016, Debtors' Chapter 13 plan was confirmed.

On June 13, 2017, Trustee filed a motion to dismiss for failure to submit 2016 tax returns/refunds. On June 16, 2016, Debtors filed an opposition. The case was dismissed on July 25, 2017.

Debtors state that their tax "refunds" were sent in around June 16, 2016, but that their state returns were not processed until July 26, 2017. Trustee has filed comments indicating approval of the motion, if Debtors cure delinquency in the amount of \$612.08.

DISCUSSION

Fed. R. Bankr. P. Rule 9024, incorporating Fed. R. Civ. P. Rule 60(b)(1), provides for

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CONT... Alberto Plascencia and Martina Plascencia

Chapter 13

relief from an order for, among other things, "mistake, inadvertence, surprise, or excusable neglect." Debtor's counsel states that it is his recollection that Trustee stated he would withdraw the motion to dismiss on the date of the hearing.

Given the conditional approval of the Trustee and the evidence submitted by Debtor, the Court finds that the requested relief is proper assuming that the condition has been satisfied.

TENTATIVE RULING

The Court is inclined to GRANT the motion in accordance with the terms in Trustee's comments.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Alberto Plascencia

Represented By
Paul Y Lee

Joint Debtor(s):

Martina Plascencia

Represented By
Paul Y Lee

Movant(s):

Martina Plascencia

Represented By
Paul Y Lee

Alberto Plascencia

Represented By

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CONT...

Alberto Plascencia and Martina Plascencia

Paul Y Lee

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Hearing Room 303

12:30 PM

6:16-20553 Diana Cescolini

Chapter 13

#2.00 Motion RE: Objection to Claim Number 17 by Claimant Real Time Resolutions, Inc. as Agent For Southstar I,LLC.

EH__

Docket 35

Tentative Ruling:

9/21/17

Background:

On November 30, 2016, Diana Cescolini ("Debtor") filed a Chapter 13 voluntary petition. On January 24, 2017, Debtor's Chapter 13 plan was confirmed.

On April 12, 2017, Real Time Resolutions, Inc. ("Creditor") filed an unsecured proof of claim in the amount of \$46,776.25 ("Claim 17"). On August 15, 2017, Debtors filed an objection to Claim 17.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *See Lundell v. Anchor Constr. Specialists, Inc.*, 223

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CONT... **Diana Cescolini**

Chapter 13

F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Debtors argue that the statute of limitations is four years for Creditor's claim and that Creditor's claim is therefore barred. Cal. Code Civ. P. § 337(2) provides for a statute of limitations of four years for:

An action to recover (1) upon a book account whether consisting of one or

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CONT...

Diana Cescolini

Chapter 13

more entries; (2) upon an account stated based upon an account in writing, but the acknowledgement of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

Cal. Code Civ. P. § 337(1) provides that the statute of limitations is also four years for claims based upon a contract.

The Court has reviewed Creditor's proof of claim and it appears that the applicable statute of limitations is four years pursuant to Cal. Code Civ. P. § 337. Creditor's proof of claim does not provide any evidence regarding the date of the last payment on the claim. Debtor's objection to claim indicates that she has not made payment on the claim since 2007, and, therefore, that the claim is barred by the statute of limitations.

Furthermore, the Court deems failure to oppose to be consent to the relief requested pursuant to Local Rule 9013-(1)(h).

Tentative Ruling

The Court is inclined to SUSTAIN the objection.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

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CONT... Diana Cescolini

Chapter 13

Debtor(s):

Diana Cescolini

Represented By
John F Brady

Movant(s):

Diana Cescolini

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:17-15227 John E Neilsen, Sr and Kathy A Neilsen

Chapter 13

#3.00 CONT Motion to Avoid Junior Lien with Dreambuilder Investments LLC Serviced by Trojan Capital Investments LLC

From: 8/17/17

Also #4 & #5

EH__

Docket 17

Tentative Ruling:

08/17/2017

Summary of the Motion:

Notice: Improper

Opposition: None

Address: 41880 Lakefront Dr, Aguanga, CA 92536

First trust deed: \$477,763.49 with US Bank NA

Second trust deed (to be avoided): \$101,668.75 with DreamBuilder Investments LLC

Fair market value: \$465,000 (Appraisal)

TENTATIVE

The Motion is deficient for the following reasons:

1. Service of the Motion was improper because the Debtors failed to serve the Motion to the attention of an officer for both Trojan and Dreambuilder Investments pursuant to FRBP 7004; and
2. The appraisal attached to the Motion as Exhibit "4" is not supported by a declaration of the appraiser, without which the appraisal is hearsay.

Based on the foregoing, the Court is inclined to CONTINUE the hearing for the Debtor to obtain a declaration of the appraiser and for the Debtor to file and properly serve notice of the continuance and the moving papers on Trojan and Dreambuilder.

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CONT... John E Neilsen, Sr and Kathy A Neilsen

Chapter 13

The hearing shall be continued to September 21, 2017, at 12:30 p.m. The amended motion and notice of continuance must be filed on or before August 31, 2017.

APPEARANCES WAIVED.

Party Information

Debtor(s):

John E Neilsen Sr

Represented By
Julie J Villalobos

Joint Debtor(s):

Kathy A Neilsen

Represented By
Julie J Villalobos

Movant(s):

Kathy A Neilsen

Represented By
Julie J Villalobos

John E Neilsen Sr

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15227 John E Neilsen, Sr and Kathy A Neilsen

Chapter 13

#4.00 Motion to Avoid Lien Junior Lien with Dreambuilder Investments LLC Serviced
By Trojan Capital Investments LLC

Also #3 & #5

EH__

Docket 24

Tentative Ruling:

9/21/17

TENTATIVE

The Court having reviewed the motion, finding notice and service to be proper and reviewed the opposition, the Court is inclined to DENY the motion without prejudice. Specifically, as is noted in the opposition, Debtors have not submitted evidence which clearly establishes the amount owing on the senior security interest. Debtors have submitted a payoff quote, dated July 20, 2017, which states that the total amount due is \$347,890.95. Debtors have additionally submitted a letter, dated May 17, 2017, which states that the remaining deferred principal amount is \$129,872.54. Debtors' motion adds the two above amounts together, and asserts that the sum is the total amount due.

Nevertheless, the relationship between the two documents submitted by Debtors is unclear. The payoff quote submitted is dated approximately two months later than the letter, and, therefore, the letter cannot refer to the payoff quote. Because of this lack of clarity, Debtors have not established the amount owing on the senior security interest.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

John E Neilsen Sr

Represented By
Julie J Villalobos

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CONT... John E Neilsen, Sr and Kathy A Neilsen

Chapter 13

Joint Debtor(s):

Kathy A Neilsen

Represented By
Julie J Villalobos

Movant(s):

Kathy A Neilsen

Represented By
Julie J Villalobos

John E Neilsen Sr

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15227 John E Neilsen, Sr and Kathy A Neilsen

Chapter 13

#5.00 CONT Confirmation of Chapter 13 Plan

From: 7/27/17, 8/17/17

Also #3 & #4

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John E Neilsen Sr

Represented By
Julie J Villalobos

Joint Debtor(s):

Kathy A Neilsen

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-15417 Meghan McConaghy

Chapter 13

#6.00 CONT Confirmation of Chapter 13 Plan

From: 8/3/17, 8/17/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Meghan McConaghy

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, September 21, 2017

Hearing Room 303

12:30 PM

6:17-16240 Jessie Romero, Jr

Chapter 13

#7.00 CONT Confirmation of Chapter 13 Plan

From: 8/31/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jessie Romero Jr

Represented By
Bruno Flores

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, September 21, 2017

Hearing Room 303

12:30 PM

6:17-16751 Gary Ramirez and Christina Faith Ramirez

Chapter 13

#8.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gary Ramirez

Represented By
Ethan Kiwhan Chin

Joint Debtor(s):

Christina Faith Ramirez

Represented By
Ethan Kiwhan Chin

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-16757 Carla Lindo

Chapter 13

#9.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 9/1/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carla Lindo

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Hearing Room 303

12:30 PM

6:17-16773 Francisco Javier Martinez

Chapter 13

#10.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco Javier Martinez Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

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Hearing Room 303

12:30 PM

6:17-16794 Pedro N Ibanez and Celia S. Ibanez

Chapter 13

#11.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pedro N Ibanez

Represented By
James D. Hornbuckle

Joint Debtor(s):

Celia S. Ibanez

Represented By
James D. Hornbuckle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 21, 2017

Hearing Room 303

12:30 PM

6:17-16795 Artush Stepanian and Wendy L. Wilkie

Chapter 13

#12.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Artush Stepanian

Represented By
James D. Hornbuckle

Joint Debtor(s):

Wendy L. Wilkie

Represented By
James D. Hornbuckle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 21, 2017

Hearing Room 303

12:30 PM

6:17-16796 Lisa Tompkins

Chapter 13

#13.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lisa Tompkins

Represented By
James D. Hornbuckle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 21, 2017

Hearing Room 303

12:30 PM

6:17-16797 Frank Ochoa

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Ochoa

Represented By
James D. Hornbuckle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 21, 2017

Hearing Room 303

12:30 PM

6:17-16798 William R. Martin and Judy L. Martin

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William R. Martin

Represented By
James D. Hornbuckle

Joint Debtor(s):

Judy L. Martin

Represented By
James D. Hornbuckle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 21, 2017

Hearing Room 303

12:30 PM

6:17-16912 Diana Lynn Chavez

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 9/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Diana Lynn Chavez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 21, 2017

Hearing Room 303

12:30 PM

6:17-16923 Jaelyn Roylene Young

Chapter 13

#17.00 Motion to Avoid Junior Lien on Principal Residence with US Bank NA

Also #18

EH__

Docket 17

Tentative Ruling:

9/21/17

TENTATIVE

The Court having reviewed the motion and opposition, the Court is inclined to CONTINUE the motion to allow U.S. Bank National Association an opportunity to obtain a verified appraisal of the subject real property.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jaelyn Roylene Young

Represented By
Christopher J Langley

Movant(s):

Jaelyn Roylene Young

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 21, 2017

Hearing Room 303

12:30 PM

6:17-16923 Jaelyn Roylene Young

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

Also #17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaelyn Roylene Young

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 21, 2017

Hearing Room 303

12:30 PM

6:17-17087 Eugene Myers and Deborah Myers

Chapter 13

#19.00 Motion to Vacate Dismissal and Reinstate Chapter 13 Case
(9/20/17 - Case remains deficient for Employee Income Records)

EH__

Docket 22

Tentative Ruling:

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Eugene Myers

Represented By
Paul Y Lee

Joint Debtor(s):

Deborah Myers

Represented By
Paul Y Lee

Movant(s):

Deborah Myers

Represented By
Paul Y Lee

Eugene Myers

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 21, 2017

Hearing Room 303

12:31 PM

6:13-11666 Chang Y Park and Kyoung S Park

Chapter 13

#20.00 Trustee's Motion to Dismiss Case

EH__

Docket 83

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chang Y Park

Represented By
M Teri Lim

Joint Debtor(s):

Kyoung S Park

Represented By
M Teri Lim

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 21, 2017

Hearing Room 303

12:31 PM

6:16-15614 Donald Lloyd Maki

Chapter 13

#21.00 Trustee's Motion to Dismiss Case

EH__

Docket 62

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald Lloyd Maki

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, September 21, 2017

Hearing Room 303

12:31 PM

6:16-18248 Juan Jose Franco

Chapter 13

#22.00 Trustee's Motion to Dismiss Case

EH__

Docket 62

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/20/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Jose Franco

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 21, 2017

Hearing Room 303

12:31 PM

6:16-19180 Barbara Rammell

Chapter 13

#23.00 Trustee's Motion to Dismiss Case

EH__

Docket 35

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Barbara Rammell

Represented By
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 21, 2017

Hearing Room 303

12:31 PM

6:17-10179 Michael Anthony Rivera

Chapter 13

#24.00 Trustee's Motion to Dismiss Case

EH__

Docket 84

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Anthony Rivera

Represented By
Michael A Rivera

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 21, 2017

Hearing Room 303

12:31 PM

6:17-10769 Semone Ramone Monroe

Chapter 7

#25.00 Trustee's Motion to Dismiss Case Proceeding (Delinquency)

EH__

Docket 48

***** VACATED *** REASON: CASE CONVERTED TO CHAPTER 7 ON
9/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Semone Ramone Monroe

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

6:13-21046 Cecilia R Rodas

Chapter 13

#1.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 863 W Bonnie Brae Ct, Ontario, CA 91762-1502

MOVANT: WELLS FARGO BANK NA

From: 8/22/17

EH__

Docket 113

***** VACATED *** REASON: ORDER ENTERED 9/18/17**

Tentative Ruling:

Hearing Date: 8/22/17

Service: Proper

Opposition: Yes

Subject to discussion re adequate protection terms, the Court is inclined to GRANT relief from the stay under § 362(d)(1).

GRANT waiver of 4001(a)(3) stay.

GRANT Movant leave to offer/provide/enter into a potential forbearance, loan modification, refinance agreement or other loan workout.

GRANT relief requested that upon entry of this Order, for purposes of Cal. Civ. Code § 2923.5, the debtor is a borrower as defined in Cal. Civ. Code § 2920.5(C)(2)(C).

Request for APO is DENIED as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Cecilia R Rodas

Represented By
Michael Smith
Sundee M Teeple

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

CONT... Cecilia R Rodas

Chapter 13

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

6:16-11165 Efrain Figueroa

Chapter 13

#2.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 729 North Baker Avenue Ontario, California 91764

MOVANT: BANK OF AMERICA, N.A.

From: 8/22/17

EH__

Docket 33

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/18/17**

Tentative Ruling:

Hearing Date: 8/22/17

Service: Proper

Opposition: Yes

The Debtor has provided evidence that more payments have been made than are accounted for by the Movant. However, even with the additional payments, the Debtor does not dispute that he remains delinquent by at least two payments.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Efrain Figueroa

Represented By
Raj T Wadhvani

Movant(s):

Bank of America, N.A.

Represented By
William F McDonald III
Asya Landa
Bonni S Mantovani

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

CONT... Efrain Figueroa

Chapter 13

Cassandra J Richey
Alexander G Meissner

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

6:16-21232 Alejandro Salinas, Jr.

Chapter 13

#3.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 6386 Stable Falls Avenue, Rancho Cucamonga, California 91739

MOVANT: PACIFIC COMMUNITY CREDIT UNION

EH__

Docket 45

Tentative Ruling:

09/26/2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
GRANT ¶¶ 3 and 12. Request for APO DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Alejandro Salinas Jr.

Represented By
Nicholas M Wajda

Movant(s):

PACIFIC COMMUNITY CREDIT

Represented By
Nichole Glowin

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

6:17-11279 Teresa Julia Chavez

Chapter 13

#4.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 2223 Smoke Tree Lane, Ontario, CA 91762

MOVANT: BOSCO CREDIT LLC

From: 9/12/17

EH__

Docket 39

Tentative Ruling:

09/12/2017
Service: Proper
Opposition: Yes

Subject to discussions regarding an APO, the Court is inclined to GRANT relief based on the number of missed payments.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Teresa Julia Chavez

Represented By
Manfred Schroer

Movant(s):

BOSCO CREDIT LLC, its

Represented By
Nichole Glowin

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

6:17-12649 Toni N. Ephraim

Chapter 13

#5.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 2496 N Mountain View Ave San Bernardino CA 92405-3526

MOVANT: LAKEVIEW LOAN SERVICING LLC

EH__

Docket 26

Tentative Ruling:

09/26/2017

Service: Proper

Opposition: Yes

Court's tentative ruling is to GRANT relief from the stay under § 362(d)(1). GRANT
waiver of 4001(a)(3) stay and relief requested under ¶3.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Toni N. Ephraim

Represented By
Paul Y Lee

Movant(s):

Lakeview Loan Servicing LLC

Represented By
Daniel K Fujimoto

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

6:17-15532 Page Heffner

Chapter 7

#6.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2006 Land Rover Range Rover Sport V8 4WD

MOVANT: GATEWAY ONE LENDING & FINANCE

EH__

Docket 10

Tentative Ruling:

09/26/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001
(a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing,
the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Page Heffner

Represented By
Ahren A Tiller

Movant(s):

Gateway One Lending & Finance

Represented By
Austin P Nagel

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

6:17-15816 Integrated Wealth Management Inc

Chapter 7

#7.00 Motion for Relief from Stay

MOVANT: CHRIS RISENMAY; JAMES BRAY; NICK CUNNINGTON; DAVID THATCHER; CLARK PENNEY; SHATTUCK LAMM; STEPHEN BIESINGER; MARK THATCHER; BRANDT KUHN; MICHELE SARNA; MARK HAYEK, AND MIKE MCCONNELL

EH__

Docket 27

*** VACATED *** REASON: CONTINUED TO 10/3/17 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

Movant(s):

Mark Hayek

Represented By
Erwin J Shustak

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

6:17-16278 Francisco Lopez

Chapter 13

#8.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3055 Vintage Place, Riverside (Area), California 92509

MOVANT: CALIFORNIA HOUSING FINANCE AGENCY

CASE DISMISSED 8/15/17

EH__

Docket 11

Tentative Ruling:

09/26/2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay and request under ¶2,3 and 6. Additionally, based on the Debtor's failure to file complete schedules, the dismissal of the Debtor's case on 8/15/17, and for the reasons set forth in the Motion, the Court finds that an evaluation of the Fjelsted factors warrants annulling the automatic stay to validate the postpetition foreclosure sale of the Property, and also GRANTS on that basis..

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Francisco Lopez

Pro Se

Movant(s):

California Housing Finance Agency

Represented By
Mark S Krause

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

CONT... Francisco Lopez

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

6:17-16316 Claudia Acevedo

Chapter 7

#9.00 Motion for relief from the automatic stay with supporting declarations
UNLAWFUL DETAINER RE: 16462 Ridge field Drive, Riverside, Ca

MOVANT: GW SAN DIEGO PROPERTIES, LLC

EH__

Docket 21

Tentative Ruling:

09/26/2017
Service is Proper
Opposition: None

As noted in the Court's prior tentative ruling of 8/29/2017, when considering the Debtor's Motion to Impose/Continue Stay in the instant case (Docket No. 8), the Property has been the subject of multiple unauthorized grant deeds and at least seven bankruptcy cases since 2010. Additionally, the Trustee's Deed of Sale following foreclosure was recorded on 6/29/2017. Based on the history of unauthorized transfers and bankruptcy filings, the Court finds that Movant has demonstrated sufficient bad faith grounds to justify granting relief from the stay under §§ 362(d)(1) and (d)(2) and (d)(4). The Court further GRANTS waiver of 4001(a)(3) stay and GRANTS Movant's requests under ¶¶ 7, 9 and 11, except that the request under ¶¶ 7 and 9 are modified to require recordation. Movant's requests under ¶¶ 3 and 10 are DENIED for lack of cause shown.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Claudia Acevedo

Represented By
Richard McAndrew

Movant(s):

GW SAN DIEGO PROPERTIES,

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

CONT... Claudia Acevedo

Helen G Long

Chapter 7

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

6:17-16707 Kathleen Flynn

Chapter 13

#10.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2014 Ford Mustang; VIN: 1ZVBP8AM1E5247832

MOVANT: ONTARIO-MONTCLAIR SCHOOL EMPLOYEES FEDERAL CREDIT
UNION

EH__

Docket 16

***** VACATED *** REASON: CASE DISMISSED 9/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kathleen Flynn

Represented By
Freddie V Vega

Movant(s):

Ontario-Montclair School

Represented By
Bruce P. Needleman

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

6:17-17469 Annette Culpepper

Chapter 13

#11.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate REAL PROPERTY: 23310 Gardenia Dr Corona, CA 92883

MOVANT: ANNETTE CULPEPPER

EH__

Docket 12

Tentative Ruling:

09/26/2017

In her prior case, Debtor fell behind in payments owed to the First and Second lienholders on her primary residence (lienholders had obtained APOs as to each). Relief from stay was entered as to the Second Priority lienholder immediately prior to the Debtor voluntarily dismissing the case. Debtor has now paid off her car which has increased her disposable income for the current plan. Her disposable income in the current plan is \$795. In her prior chapter 13, she was only able to pledge \$584.35. Based on her increase in disposable income Debtor seeks to pledge into her plan, the Debtor has demonstrated that the current plan is filed in good faith.

Additionally, service on the secured creditors in the case complies with Rule 7004 and no opposition to the Motion has been filed

Based on the foregoing, the Court's tentative ruling is to GRANT the Motion and continue the stay as to all creditors.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Annette Culpepper

Represented By
Nathan Fransen

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

10:00 AM

CONT... Annette Culpepper

Chapter 13

Movant(s):

Annette Culpepper

Represented By

Nathan Fransen

Nathan Fransen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

2:00 PM

6:17-17137 Ricks Patio, Inc

Chapter 11

#12.00 Order (1) Setting Scheduling Hearing And Case Management Conference And
(2) Requiring Status Report

EH__

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricks Patio, Inc

Represented By
Robert B Rosenstein

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01238 Allied Injury Management, Inc. v. De La Llana et al

#13.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01238. Complaint by Allied Injury Management, Inc. against Sylvia De La Llana, Myelin Diagnostics, Sunkist Imaging Medical Center, Shoreline Medical Group, Inc., Paramount Family Health Center, Javier Torres, Justin Paquette, Nor Cal Pain Management Medical Group, Inc., One Stop Multi-Specialty Medical Group & Therapy, Inc.. (Charge To Estate). Complaint for Interpleader and Declaratory Relief Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy
**(Dismiss by Stip/Judgment - Nor Cal Pain Management Medical Group, Inc.)
(Judgment as to Shoreline Medical Group, Inc)
(Judgment as to Justin Paquette)
(Judgment as to Sunkist Imaging Medical Center)
(Judgment as to Dr. Javier Torres)
(Judgment as to Sylvia De La Llana and Myelin Diagnostics)
(Dismissed as to One Stop Multi-Specialty Medical Group & Therapy Inc)
(Dismissed as to Paramount Family Health Center)**

From: 11/15/16, 12/6/16, 12/20/16, 2/28/17, 4/25/17, 6/27/17, 7/11/17, 8/22/17

EH__

Docket 1

***** VACATED *** REASON: COMPLAINT RESOLVED AS TO ALL DEFENDANTS**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Javier Torres

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

2:00 PM

CONT... Allied Injury Management, Inc.

Chapter 11

Justin Paquette	Pro Se
Nor Cal Pain Management Medical	Pro Se
Shoreline Medical Group, Inc.	Pro Se
Sylvia De La Llana	Pro Se
Myelin Diagnostics	Pro Se
Sunkist Imaging Medical Center	Pro Se

Plaintiff(s):

Allied Injury Management, Inc.	Represented By Alan W Forsley Jason Balitzer
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Trustee(s):

David M Goodrich (TR)	Represented By Mark S Horoupian Jason Balitzer Victor A Sahn Steven Werth
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**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

2:00 PM

6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

Adv#: 6:17-01059 ASR Constructors Inc a California Corporation et a v. Gotte Electric, Inc. et

#14.00 CONT Motion for Order Authorizing Deposit of Disputed Funds and Granting Related Interpleader Relief

From: 5/30/17, 6/19/17, 7/24/17

Also #15

EH__

Docket 37

Tentative Ruling:

6/19/17

PROCEDURAL BACKGROUND

On September 20, 2013, ASR Constructors, Inc. ("Debtor") filed a Chapter 11 voluntary petition. On October 23, 2013, related entities Another Meridian Company, LLC ("Meridian") and Inland Machinery, Inc. ("Inland") (collectively, "Debtors") filed Chapter 11 voluntary petitions. On November 1, 2013, the Court ordered joint administration of the estates of Debtor, Meridian and Inland.

Prior to the filing of the bankruptcy petition, Gotte Electric, Inc. ("Gotte") filed a state court complaint against Debtors and Federal Insurance Company ("FIC") to set aside a fraudulent transfer. Upon Debtor's filing of a Chapter 11 petition, the action was removed to the bankruptcy court.

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On November 17, 2015, Debtors filed a motion to approve compromise. On November 24, 2015, UST filed an objection. On December 1, 2015, Insurance Company of the West ("ICW") filed an objection. After further briefing, the Court granted the motion to approve the compromise, and an order was entered approving the compromise on December 30, 2015.

On January 8, 2016, Debtors' bankruptcy cases were dismissed. On February 13, 2017, Debtors' bankruptcy cases were reopened. On March 14, 2017, upon request by Debtors the Court modified the seventh paragraph of its dismissal order as follows:

7. ~~Except for the claims asserted in the declaratory relief action filed by ICW and/or Gotte pursuant to the Settlement Agreement,~~ this Court shall retain exclusive jurisdiction to enforce the provisions of the Settlement Agreement, 9019 Order and this Dismissal Order and to resolve any dispute(s) concerning the Settlement Agreement, the 9019 Order and/or this Dismissal Order or the rights and duties of the parties hereunder or thereunder or any issues relating to the Settlement Agreement, the 9019 Order and/or this Dismissal Order, including, interpretation of the terms, conditions and provisions thereof, and all issues and disputes arising in connection with the relief authorized under Settlement Agreement, the 9019 Order and/or this Dismissal Order.

On March 17, 2017, Debtors filed a complaint in interpleader against Gotte and other parties. On May 8, 2017, Debtors filed a motion for authorization to deposit disputed funds and for interpleader relief. At a status conference on May 16, 2017, the Court expressed some concerns with the relief requested, and Debtors filed a modification to motion on June 5, 2017.

FACTUAL BACKGROUND

Debtor was a general contractor. In connection with Debtor's work, FIC issues a number of surety performance and payment bonds on Debtor's behalf. Debtors and

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their principals, in return, executed various indemnity and collateral agreements in favor of FIC.

Gotte was Debtor's sub-contractor on three projects. On May 28, 2013, Gotte obtained a state court judgment against Debtor in the amount of \$6,655,486.47, and on July 1, 2013, Gotte filed a UCC judgment lien against Debtor. On February 1, 2010, while the state court litigation was pending, Debtor transferred certain real property (the "Meridian Property") to Meridian for \$3,100,000 and certain equipment and machinery (the "Equipment") to Inland for \$3,780,458. These transfers were the subject the of the fraudulent transfer action commenced by Gotte. FIC has a lien on the Meridian Property, the Equipment, and Debtor's accounts receivable.

On December 17, 2013, the Court authorized the sale of that part of the Meridian Property located in the city of Riverside for a purchase price of \$3,150,000. Net proceeds of the sale, totaling \$1,790,000 were held in a DIP account, subject to the claims of Gotte, FIC, Berkley Regional Insurance Company ("BRIC") and ICW. Additionally, net proceeds of the sale of certain real property located in Phelan, totaling \$50,000, were held in a DIP account subject to the claims of FIC and BRIC, and net proceeds of an auction sale of the Equipment, totaling \$1,006,000, were held in a DIP account subject to the lien of FIC. The total amount of funds on hand at the time of the filing of the compromise motion was \$3,152,360.28.

As part of the compromise motion, FIC agreed to grant a carve-out from its collateral in the amount of \$200,000 plus 45% of net proceeds from the sale of the remainder of the Meridian Property. The various parties' respective rights to the FIC carve-out were not determined by the compromise motion.

On December 24, 2015, ICW filed a complaint in state court for declaratory relief and interpleader. On February 9, 2016, the IRS filed a notice of removal, removing the case to federal district court. On May 24, 2016, the district court dismissed the case upon motion of the IRS for lack of subject matter jurisdiction. As such, it is not clear that the interpleader action can be heard in either state court or federal district court.

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DISCUSSION

Debtors request two categories of relief: (1) authority to deposit the funds constituting the FIC carve-out (the "Funds") into the court registry; and (2) various interpleader relief.

I. Deposit of Funds in Court Registry

Fed. R. Bankr. P. Rule 7067 incorporates Fed. R. Civ. P. Rule 67. FRCP Rule 67(a) states:

If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party – on notice to every other party and by leave of court – may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

FRCP Rule 67 is properly invoked when there is a live dispute regarding the entitlement to the funds in question. *See generally Alstom Caribe, Inc. v. George P. Reintjes Co., Inc.*, 484 F.3d 106, 113 (1st Cir. 2007) ("The core purpose of Rule 67 is to relieve a party who holds a contested fund from responsibility for disbursement of that fund among those claiming some entitlement thereto."); *see also Garrick v. Weaver*, 888 F.2d 687, 694 (10th Cir. 1989) ("The language of Rule 67 leaves to the discretion of the district court the decision as to whether to permit the deposit of funds in court. . . . The magistrate acted well within his discretionary authority in allowing the funds to be paid into court and excusing the defendants. His decision both ensured that the settlement fund would be available for disbursement and facilitated judicial

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economy by permitting the defendants, who no longer had an interest in the funds or in these proceedings, to withdraw.").

Here, there is clearly a live dispute regarding entitlement to the Funds.

II. Interpleader Relief

Debtors' original motion requested that the Court grant the following five forms of relief: (1) discharge Debtors from further liability to the named defendants; (2) dismissal of Debtors, with prejudice, from the adversary; (3) entry of a permanent injunction preventing Defendants from asserting claims against Debtor relating to the settlement funds; (4) requiring the named defendants to litigate between themselves; (5) an award of costs and reasonable attorney fees. Debtors' modification to the motion withdrew the last request, and modified the second request to reduce Debtors' role in the action to that of a monitoring capacity.

"In an interpleader action, the 'stakeholder' of a sum of money sues all those who might have claim to the money, deposits the money with the district court, and lets the claimants litigate who is entitled to the money." *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1265 (9th Cir. 1992). Procedurally,

An interpleader action typically involves two stages. In the first stage, the district court decides whether the requirements for rule or statutory interpleader action have been met by determining if there is a single fund at issue and whether there are adverse claimants to that fund. If the district court finds that the interpleader action has been properly brought the district court will then make a determination of the respective rights of the claimants.

Rhoades v. Casey, 196 F.3d 592, 600 (5th Cir. 1999) (citations omitted).

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Here, Debtors are relying on rule interpleader. Fed. R. Civ. P. Rule 22(a)(1), incorporated into bankruptcy proceedings by Fed. R. Bankr. P. Rule 7022(a), states:

- (1) **By a Plaintiff.** Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:
 - (A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or
 - (B) the plaintiff denies liability in whole or in part to any or all of the claimants.

Here, the various defendants' actual or potential claims to the Funds may expose Debtors to multiple liability. Therefore, an interpleader action is appropriate.

In cases where an interpleader action is appropriate, *Collier* states the following:

By turning over the fund or the property as directed by the court, the plaintiff may be discharged from the proceeding and any further liability. There may be an injunction issued to prevent the adverse claimants from further pursuing the stakeholder. On a finding that interpleader is proper, the court will then enter an order requiring the claimants to the fund or property to interplead.

10 *Collier on Bankruptcy* ¶ 7022.01 (16th ed. 2013); *see also* 28 U.S.C. § 2361. Here, Debtors' requests closely track the language identified in *Collier's* and, in the absence of opposition, appear appropriate here.

III. Jurisdictional Statement

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A. Bankruptcy Court Jurisdiction

Nevertheless, the Court must determine whether it has subject matter jurisdiction. *See, e.g., In re Strawberry*, 464 B.R. 443, 447 (Bankr. N.D. Fla. 2012). This complaint in interpleader was filed in a dismissed bankruptcy case and would result in litigation over non-bankruptcy claims between non-debtor parties.

28 U.S.C. § 157 provides for four categories of cases which the district court may refer to the bankruptcy court: (1) cases under title 11; (2) proceedings arising under title 11; (3) proceedings arising in a case under title 11; and (4) proceedings related to a case under title 11. *See, e.g., In re S&M Constructors, Inc.*, 144 B.R. 855, 858 (Bankr. W.D. Mo. 1992). Additionally, 28 U.S.C. § 157(b) divides matters into core and non-core proceedings.

The first category, cases under title 11, refers to the bankruptcy case commenced by the filing of the petition. *See, e.g., In re Wood*, 825 F.2d 90, 92 (5th Cir. 1987). This category is inapplicable here, as the matter at issue is a complaint in interpleader.

The second category, proceedings arising under title 11, refers to those actions that are expressly created by title 11. *See, e.g., In re Wolverine Radio Co., Inc.*, 930 F.2d 1132, 1141, n.14 (6th Cir. 1991). This category is inapplicable here – the underlying liability is premised upon state law claims.

The third category¹, proceedings arising in a case under title 11, refers to claims that, although not created by title 11, would have no existence absent the bankruptcy, such as administrative matters. *See, e.g., In re Repository Techs., Inc.*, 601 F.3d 710, 719 (7th Cir. 2010). This category is inapplicable here.

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The fourth category, proceedings related to a case under title 11, contains two different subsets: (1) causes of action owned by the debtor that become property of the estate under § 541; and (2) suits between third parties which in one way or another affect the administration of the bankruptcy case. *Id.* It is only the latter category that is potentially invoked by this proceeding.

The primary test for related to jurisdiction is the Third Circuit's *Pacor* test:

The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.* Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action . . . and which in any way impacts upon the handling and administration of the bankrupt estate.

Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984). The Supreme Court previously acknowledged the prevalence of the *Pacor* test:

In attempting to strike an appropriate balance, the Third Circuit in *Pacor, Inc. v. Higgins*, 743 F.2d 984 (1984), devised the following test for determining the existence of "related to" jurisdiction:

[Excerpt quoted above] . . .

The First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits have adopted the *Pacor* test with little or no variation. The Second and Seventh Circuits, on the other hand, seem to have adopted a slightly different test. But whatever test is used, these cases make clear that bankruptcy courts have no

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jurisdiction over proceedings that have no effect on the estate of the debtor.

Celotex Corp. v. Edwards, 514 U.S. 300, 308 n.6 (1995) (citations omitted).

The Ninth Circuit has recently reiterated its approval of the *Pacor* test for pre-confirmation matters:

The test for post-confirmation "related to" jurisdiction was modified from the seminal pre-confirmation *Pacor* test for "related to" jurisdiction, which had been previously adopted by the Ninth Circuit in *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988). Surveying the courts that had applied a limited version of the *Pacor* test in the post-confirmation context, we recognized that the *Pacor* test of whether the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy . . . If the outcome could alter the debtor's rights, liabilities, options, or freedom of action . . . and which in any way impacts upon the handling and administration of the bankruptcy estate was somewhat overbroad in the post-confirmation context.

In re Wilshire Courtyard, 729 F.3d 1279, 1287 (9th Cir. 2013) (citations and quotations omitted).

First, it is unclear whether the complaint in interpleader would affect the administration of the bankruptcy estate, if a bankruptcy estate was being administered, Second, the Court must consider whether it can ever have "related to" jurisdiction in an action filed in a dismissed case because there is no estate to administer, and, consequently, such an action cannot affect administration of the estate.

B. The Effect of Dismissal on "Related to" Jurisdiction

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The *Pacor* test includes two requirements: (1) the action must alter the rights or obligations of the debtor; and (2) the action must have an effect on the administration of the estate. *See, e.g., In re Bass*, 171 F.3d 1016, 1022 (5th Cir. 1999). This second prong becomes an issue when an action is filed in a dismissed case. *See, e.g., id.* ("The second prong, however, is problematical. Although the injunction would have an impact on the Debtor, it could not have any effect whatsoever on his estate in bankruptcy or its administration. First and foremost, such an estate no longer exists.").

A different situation arises when, *after* an action is commenced, the underlying bankruptcy case is dismissed. Courts have generally concluded that in such a situation, retention of jurisdiction is discretionary, and based on principles of equity and judicial economy. *See, e.g., In re Smith*, 866 F.2d 576, 580 (3rd Cir. 1989) ("Drawing upon an analogy to the disposition of ancillary and pendent claims, the courts have held that they may consider a number of factors to determine whether jurisdiction should be retained."). Such a situation is, however, fundamentally different from the situation here. *See id.* ("Appellees fail, however, to distinguish between the determination of the existence of jurisdiction at the outset of these proceedings and the determination of whether 'related' claims should be dismissed with the dismissal of the bankruptcy case or the discharge of the debtor."); *In re Fietz*, 852 F.2d 455, 457 n.2 (9th Cir. 1988) ("Subject matter jurisdiction should be determined as of the date that the complaint, or in this case the cross-claim, was filed.").

In developing a standard for when a bankruptcy court should retain jurisdiction following the dismissal of the underlying case, courts have analogized the situation to a district court's retention of pendent state claims following dismissal of the federal claims. *See, e.g., In re Porges*, 44 F.3d 159, 162-63 (2nd Cir. 1995); *In re Carraher*, 971 F.2d 327, 328 (9th Cir. 1992); *In re Casamont Investors, Ltd.*, 196 B.R. 517, 522 (B.A.P. 9th Cir. 1996) ("In determining whether the bankruptcy court abused its discretion by retaining jurisdiction over related proceedings, the Ninth Circuit and several other circuits have analogized to cases concerning the propriety of district courts retaining jurisdiction over pendent state law claims after federal claims have been dismissed."). Applying that analogy and the applicable standard to the matter at issue here reveals the fundamental problem: a district court can never exercise pendent jurisdiction over state law claims when, at their commencement, there is no

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existing federal claim for the state claims to supplement. In the bankruptcy context, the Court cannot exercise related to jurisdiction if there is no bankruptcy case for the complaint to relate to.

C. Ancillary or Retained Jurisdiction

Attempts have been made to avoid this issue by arguing for the existence of supplemental or retained jurisdiction. *See In re Bass*, 171 F.3d 1016, 1023-242 (5th Cir. 1999) (supplemental) ("Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts, and the exercise of *ancillary and pendent* jurisdiction by bankruptcy courts could subsume the more restrictive 'related to' and 'arising in' jurisdiction, such that the latter would be rendered substantially, if not entirely, superfluous."); *id.* at 1025 (retained) ("[B]efore a court can exercise its discretion to 'retain' jurisdiction over a 'related proceeding,' the court must have had jurisdiction over that proceeding in the first place. The Denneys did not file their suit in Texas until *after* the bankruptcy case in Utah had been closed. From a purely temporal standpoint, there was no proceeding over which bankruptcy court jurisdiction could be 'retained.'"); *see also In re Morris*, 950 F.2d 1531, 1534 (11th Cir. 1992) (same). The Ninth Circuit has previously discussed the application of supplemental, or ancillary, jurisdiction in the context of interpreting a settlement agreement in a Chapter 11 structured dismissal:

Here, when Sea Hawk filed its adversary proceeding, VFDA's Chapter 11 case had been dismissed and a final decree entered. . . .

The bankruptcy court has no role in the resolution of the creditors' dispute, and it is involved only fortuitously because the dispute implicates the terms of a settlement agreement approved by the court as a precondition of the dismissal of VFDA's bankruptcy. . . .

The bankruptcy court did not consider dismissal of VFDA's bankruptcy to automatically divest it of jurisdiction over a related case. It reasoned that after

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dismissal, the court has discretion to retain jurisdiction over a related proceeding, *citing In re Carraher*, 971 F.2d 327, 328 (9th Cir. 1992). . . .

Carraher does not support the bankruptcy court's decision. It stands for the proposition that a bankruptcy court may retain jurisdiction over a related proceeding pending at the time of the dismissal of the bankruptcy case. It does not support the assertion of bankruptcy jurisdiction over a proceeding initiated subsequent to the dismissal of the bankruptcy case.

In re Valdez Fisheries Dev. Ass'n, Inc., 439 F.3d 545, 547-48 (9th Cir. 2006). *Valdez Fisheries*, however, made clear that the result may have been different had the Court's dismissal order explicitly retained jurisdiction over the dispute in question. *See id.* at 549 ("Ancillary jurisdiction may rest on one of two bases: (1) to permit disposition by a single court of factually interdependent claims, and (2) to enable a court to vindicate its authority and effectuate its decrees.") (*citing Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 79-80 (1994)). The second purpose of *Kokkonen's* retained, related-to jurisdiction is at issue here.

Nevertheless, the second prong of the *Kokkonen* test has its limits. *See, e.g., In re Ray*, 624 F.3d 1124, 1136 (9th Cir. 2010) ("In short, hearing a breach of contract claim predicated on evidence that came to light after a bankruptcy case had closed, its creditors paid, and the debtor discharged, stretches the limits of the bankruptcy court's ancillary jurisdiction too far, going beyond what is necessary for the bankruptcy court to 'effectuate its decrees.' . . . Reopening of the bankruptcy case is rare, and only used when necessary to resolve bankruptcy issues, not to adjudicate state law claims that can be adjudicated in state court.") (citation omitted). Importantly, an explicit retention of jurisdiction is only valid to the extent that jurisdiction is retained over claims that could have been heard at the time that jurisdiction was retained. *See, e.g., In re Nobel Group, Inc.*, 529 B.R. 284, 292 (Bankr. N.D. Cal. 2015). To conclude otherwise would be to allow bankruptcy courts to craft their own jurisdictional authority. *See, e.g., In re Resorts Int'l, Inc.*, 372 F.3d 154, 161 (3rd Cir. 2004) ("[N] either the bankruptcy court nor the parties can write their own jurisdictional ticket. When a court lacks subject matter jurisdiction over a dispute, the parties cannot create it by agreement even in a plan of reorganization.").

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First, there appears to be a problem in that jurisdiction was not conferred until the time of the dismissal order. Here, the retention of jurisdiction over the interpleader action was concurrent with dismissal of the case, and, as such, the claim for which jurisdiction was retained could not have been filed until after the case was dismissed. As stated above, related to jurisdiction is determined at the time the claim is filed, but, importantly, is premised upon the existence of a case that the claim can be related to. Therefore, because the jurisdiction in question was only conferred in a dismissal order, there would no existing bankruptcy case at the time an interpleader action could have been filed, so as to confer related to jurisdiction. The Court is aware of the confusing nature of the issue.

Second, even if the retention of jurisdiction had been in the settlement order, and, as such, the retention of jurisdiction would have arisen in the context of an existing case, allowing related to jurisdiction to exist², it would be unclear, possibly unlikely, that the Court would have subject matter jurisdiction over the complaint in interpleader. As briefly alluded to in section B, *supra*, the Ninth Circuit has limited the *Pacor* "related to" test to pre-confirmation matters, and has imposed a more demanding test for post-confirmation matters. *See In re Pegasus Gold Corp.*, 394 F.3d 1189, 1194 (9th Cir. 2005). The rationale for this distinction is that the bankruptcy estate ceases to exist post confirmation. *See generally id. Pegasus Gold*, therefore, replaced the more liberal *Pacor* test with a "close nexus" test after the dissolution of the bankruptcy estate. *See id.* The "close nexus" test requires that the matter be directly affect the bankruptcy proceeding for subject matter jurisdiction to be present. *See id.* It is difficult to ascertain how the "close nexus" test could be satisfied when the basis for the complaint in interpleader, the settlement agreement, also contemplates that the bankruptcy proceedings will cease.

Furthermore, even if Debtors had modified the settlement order and could show that the "close nexus" test was satisfied, the pendent jurisdiction test alluded to in section B, *supra*, may also merit consideration. This test instructs the Court to consider the interests of "economy, convenience, fairness and comity." *See In re Carraher*, 971 F.2d 327, 328 (9th Cir. 1992).

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The Court need not reach the "close nexus" or pendent jurisdiction tests at this point, however, for the following two reasons: (1) the modification of the dismissal order does not properly appear to confer jurisdiction on the Court, and (2) the settlement order expressly disclaims jurisdiction over the interpleader action.

TENTATIVE RULING

Based on the foregoing, the Court believes dismissal of the adversary for lack of subject matter jurisdiction is appropriate. The Court will consider whether to, on its own motion, amend the dismissal order to delete the retention of jurisdiction, and at the request of the parties, may continue the hearing for further briefing in light of the foregoing.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

ASR Constructors Inc a California	Represented By James C Bastian Jr Melissa Davis Lowe
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Defendant(s):

UNITED STATES OF AMERICA	Represented By Charles Parker
Western Alliance Bank, an Arizona	Pro Se
Carlin Law Group APC	Represented By Kevin R Carlin
Bangerter Frazier & Graff PC	Represented By Daniel P Wilde
Ledcor Construction, Inc., a	Represented By

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Daniel P Scholz

Insurance Company Of The West

Represented By
Jennifer Leland
David B Shemano

Gotte Electric, Inc.

Pro Se

Employment Development

Represented By
Elisa B Wolfe-Donato

Steven Schonder

Pro Se

Angela Denise McKnight

Pro Se

Movant(s):

Inland Machinery, Inc.

Represented By
James C Bastian Jr
Melissa Davis Lowe

Another Meridian Company, LLC

Represented By
James C Bastian Jr
Melissa Davis Lowe

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

Plaintiff(s):

Inland Machinery, Inc.

Represented By
James C Bastian Jr
Melissa Davis Lowe

Another Meridian Company, LLC

Represented By
James C Bastian Jr
Melissa Davis Lowe

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

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Adv#: 6:17-01059 ASR Constructors Inc a California Corporation et a v. Gotte Electric, Inc. et

#15.00 CONT Status Conference RE: Complaint by ASR Constructors Inc a California Corporation, Another Meridian Company, LLC, Inland Machinery, Inc. against Gotte Electric, Inc., Insurance Company Of The West, Employment Development Department, Trico-Savi Business Park, L.P., a California limited partnership, Angela Denise McKnight, Cardlock Fuels Systems Inc., Steven Schonder, Western Alliance Bank, an Arizona corporation, UNITED STATES OF AMERICA, Carlin Law Group APC, Ledcor Construction, Inc., a Washington corporation, Bangerter Frazier & Graff PC. (Charge To Estate \$350.00). Nature of Suit: 02- Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

From: 5/16/17, 6/19/17, 7/24/17

Also #14

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

Defendant(s):

UNITED STATES OF AMERICA

Represented By
Charles Parker

Western Alliance Bank, an Arizona

Pro Se

Carlin Law Group APC

Represented By

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Kevin R Carlin

Bangerter Frazier & Graff PC

Represented By
Daniel P Wilde

Ledcor Construction, Inc., a

Represented By
Daniel P Scholz

Insurance Company Of The West

Represented By
Jennifer Leland
David B Shemano

Gotte Electric, Inc.

Pro Se

Employment Development

Represented By
Elisa B Wolfe-Donato

Steven Schonder

Pro Se

Angela Denise McKnight

Pro Se

Plaintiff(s):

Inland Machinery, Inc.

Represented By
James C Bastian Jr
Melissa Davis Lowe

Another Meridian Company, LLC

Represented By
James C Bastian Jr
Melissa Davis Lowe

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

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#16.00 CONT Order (1) Setting Scheduling Hearing and Case Management Conference and (2) Requiring Status Report re **Another Meridian Company LLC**

From: 3/7/17, 7/11/17, 7/24/17

Also #17 & #18

EH__

Docket 630

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

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#17.00 CONT Order (1) Setting Scheduling Hearing and Case Management Conference and (2) Requiring Status Report re **Inland Machinery, Inc**

From: 3/7/17, 7/11/17, 7/24/17

Also #16 & #18

EH__

Docket 630

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

2:00 PM

6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

#18.00 CONT Order (1) Setting Scheduling Hearing and Case Management Conference and (2) Requiring Status Report re **ASR Constructors Inc**

From: 3/7/17, 7/11/17, 7/24/17

Also #16 & #17

EH__

Docket 630

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, September 26, 2017

Hearing Room 303

2:00 PM

6:16-19993 B & B Family, Incorporated

Chapter 11

#19.00 Confirmation of Chapter 11 Plan

Also #20

EH _____

Docket 89

*** VACATED *** REASON: CONTINUED TO 10/31/17 AT 2:00 P.M.

Tentative Ruling:

07/25/2017

Background

On November 10, 2016 ("Petition Date"), B & B Family, Incorporated ("Debtor") filed a Chapter 11 voluntary petition. The Debtor is owned by Patricia Forte (who owns 50% of shares) and by Randall and Marianne Richey, husband and wife, who own the remaining 50% of shares in the Debtor (collectively, "Shareholders")

Debtor operates Oggi's Pizza and Brewing Company in Apple Valley, California. Debtor has fifty-five employees. The Debtor's Schedules show that it had approximately \$114,662.50 in assets as of the Petition Date. The Debtor's assets consist primarily of leased equipment, business licenses, and liquid assets in the form of cash and accounts.

On March 31, 2017, Debtor filed its Disclosure Statement and Chapter 11 Plan of Reorganization. On May 2, 2017, Comerica Bank filed a Limited Response to the Debtor's Disclosure Statement pointing simply to the Debtor's omission of its franchise agreement as an executory contract being assumed. In response, the Debtor amended its Disclosure Statement and Plan on May 2, 2017 (the "Amended DS and Plan"). Additionally, on May 3, 2017, the Debtor filed redline versions of the Amended DS and Plan reflecting the changes made since the March 31, 2017, filings.

Following the May 2017, hearing on the Disclosure Statement, the Debtor filed amended pleadings on June 13, 2017. Service was proper and no objections to the Debtor's Second Amended Disclosure Statement have been filed.

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CONT... B & B Family, Incorporated

Chapter 11

Legal Standards

A. Adequate Information

A Chapter 11 disclosure statement is required to contain "adequate information" pursuant to 11 U.S.C. § 1125(b). Section 1125(f)(2) provides that: "the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28." The United States Courts have devised a disclosure statement template for small businesses, Form B25B, which Debtor generally adopted as to format.

As to the substance of a disclosure statement, 11 U.S.C. § 1125(a)(1) defines "adequate information" 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, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor 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 and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information

The type of information required varies with the circumstances. *See, e.g., In re Jeppson*, 66 B.R. 269, 292 (Bankr. D. Utah 1986) (listing nineteen categories of information commonly required); *see also In re Malek*, 35 B.R. 443, 443-44 (Bankr. E.D. Mich. 1983) (listing minimum requirements).

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CONT... **B & B Family, Incorporated**

Chapter 11

B. *Plan Feasibility*

"There are numerous decisions which hold that where a plan is on its face nonconfirmable, as a matter of law, it is appropriate for the court to deny approval of the disclosure statement describing the nonconfirmable plan." *In re Silberkraus*, 253 B.R. 890, 899 (Bankr. C.D. Cal. 2000) (collecting cases).

Disclosure Statement & Plan

The Chapter 11 Plan's proposed effective date is the first day of the first full month after entry of the final order confirming plan (but no earlier than 8/01/17). Classes of claims are categorized as follows:

A. Claims Classification

1) *Administrative Claims:*

- UST Fees - \$4,875 (estimated), in full on effective date
- Turoci Firm - \$40,000 (estimated)/Terms: in full on effective date

2) *Priority Tax Claims:*

- IRS: \$5,251.48/ Terms: in full on effective date
- California BOE: \$125,750.40/Terms: 48 months, 7% interest, \$3,011.25/ mo.

3) *Class 1: Comerica Bank (Impaired)*

- Nature of lien: *first* priority security interest in all of Debtor's assets (D values at \$150,000)
- Claim: \$494,123.90

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CONT...

B & B Family, Incorporated

Chapter 11

- Treatment: Bifurcated claim – Secured claim of \$150,000, Unsecured Claim of \$344,123.90
- Secured Claim Terms: 60 months, 6% interest, \$2,899.92/mo.
- Unsecured Claim treated with Class 6 GUCs

4) Class 2: FC Marketplace aka Pioneer Park (Impaired)

- Nature of lien: *second* priority security interest in all Debtor's assets
- Unsecured claim of \$88,963.76
- Treatment: treated with Class 6 GUCs
- Plan proposes to avoid the lien of FC Marketplace on entry of confirmation order

5) Class 3: Oggi's Corporate (Impaired)

- Nature of lien: *third* priority lien in all Debtor's assets
- Unsecured claim of \$54,106.12
- Treatment: paid with Class 6 GUCs
- Plan proposes to avoid the lien of Oggi's Corporate on entry of confirmation order

6) Class 4: Financial Pacific Leasing

- Secured as to leased restaurant equipment which D values at \$2,000
- Secured Claim of \$2,000, Treatment: Paid in full on effective date (unimpaired)

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Chapter 11

- Unsecured Claim of \$42,864.40 (paid with class 6 GUCs) (impaired)
- Plan proposes to avoid the lien of FPL on payment in full.

7) *Class 5: High Desert Prime, LP (Impaired)*

- Landlord
- Debtor is assuming the lease and proposes to cure the arrears owed to landlord
- Claim: \$178,499.98
- Treatment: 48 months, 0% interest (per agreement with HDP), \$3,718.75/mo.

8) *Class 6: General Unsecured Creditors (Impaired)*

- Total Claims: \$636,718.69
- Dividend: 17% or \$120,000
- Treatment: \$1,000/mo. for first 48 months and \$6,000 for months 48-60
- Note: Pawnee lease for bar stools, dishwasher etc., will be rejected and Pawnee filed an unsecured claim and will be treated as such.

9) *Insiders/Equity Holders*

- No Insider Claims
- Equity to retain stock subject to Section VII (which provides potentially for new value of \$10,000)

B. Plan Funding and Feasibility

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CONT... **B & B Family, Incorporated**

Chapter 11

Debtor indicates it will have \$60,000 cash on hand as of the Effective Date (\$35,000 cash on hand and \$25,000 to be accumulated between now and Effective date). This amount appears sufficient to cover payments due on the Effective Date.

Disposable income projection is \$6,400 per month based on average net disposable income since December 2016 (and after payments of \$2,204.17 to Comerica and \$3,206.78 to Sysco Foods) for a total of \$11,810.95 for plan payments. This amount appears sufficient to cover the proposed plan payments of approximately \$10,632 per month

C. Management

Patricia Forte (50% owner) is current CEO and will step down as CEO

Randall Richey will remain Secretary

Marianne Richey, current CFO will become CEO and CFO post-confirmation with day-to-day responsibility for overseeing the financial affairs.

D. Other Terms

D will be disbursing agent with no compensation unclaimed distributions to revert to reorganized Debtor.

Executory Contracts

Debtor shall assume the commercial property lease for the restaurant at 19201 Bear Valley Road in Apple Valley and shall assume the Franchise Agreement with Oggie's Corporate.

Debtor shall reject two leases for restaurant equipment.

Liens

Liens of FC and Oggie's Corporate will be extinguished upon confirmation and liens of

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CONT... B & B Family, Incorporated

Chapter 11

Comerica and FPL will be extinguished on payment in full of their allowed secured claims.

Tentative Ruling

The Court has examined the Debtor's Amended DS and Plan to determine whether "adequate information has been provided and has identified the following issues to be addressed:

- The DS and Plan contemplate bifurcation of Comerica and FPL's claims and avoidance of remaining junior liens. A Motion to Value was filed on July 24.

- The Declaration of Marianne Richey makes reference to Exhibit E and purports to authenticate this Exhibit as the "Annual Projected Cash Flow" for the Debtor based on monthly operating reports from December 2016 to April 2017. However, the "Annual Projected Cash Flow" is Exhibit D, not Exhibit E as indicated in the declaration.

There is no need for a further hearing. Once the Debtor has amended the disclosure statement the Debtor may lodge a proposed order approving the disclosure statement, as modified.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

B & B Family, Incorporated

Represented By
Todd L Turoci

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6:16-19993 B & B Family, Incorporated

Chapter 11

#20.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 12/13/16, 3/7/17, 5/30/17, 7/25/17

Also #19

EH__

Docket 8

***** VACATED *** REASON: CONTINUED TO 10/31/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

B & B Family, Incorporated

Represented By
Todd L Turoci

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Hearing Room 303

11:00 AM

6:15-20692 Donald A Nelson

Chapter 7

#1.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 49

Tentative Ruling:

9/27/2017

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1883.20

Trustee Expenses: \$ 130.16

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Donald A Nelson

Represented By
H. Christopher Heritage

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Hearing Room 303

11:00 AM

6:17-10971 Carlos Manuel Torres and Sandra Castaneda

Chapter 7

#2.00 Motion to Reopen Chapter 7 Case

EH__

Docket 16

***** VACATED *** REASON: ORDER ENTERED 9/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carlos Manuel Torres

Represented By
Priscilla C Solario

Joint Debtor(s):

Sandra Castaneda

Represented By
Priscilla C Solario

Movant(s):

Sandra Castaneda

Represented By
Priscilla C Solario

Carlos Manuel Torres

Represented By
Priscilla C Solario
Priscilla C Solario

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, September 27, 2017

Hearing Room 303

11:00 AM

6:17-10604 James Edwin Horn and Nam-Yong Horn

Chapter 7

#3.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 28

Tentative Ruling:

9/27/17

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1228.00

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

James Edwin Horn Pro Se

Joint Debtor(s):

Nam-Yong Horn Pro Se

Trustee(s):

Howard B Grobstein (TR) Pro Se

**United States Bankruptcy Court
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Hearing Room 303

11:00 AM

6:16-17911 Elizabeth T Baker

Chapter 7

#4.00 CONT Motion to Convert Case From Chapter 7 to Chapter 13

From: 8/23/17

Also #5

EH__

Docket 92

*** VACATED *** REASON: CONTINUED TO 9/28/17 AT 12:30 PM

Tentative Ruling:

8/23/17

BACKGROUND

Debtor obtained a discharge in a Chapter 7 case filed on November 30, 2010. Between February 14, 2013 and September 18, 2015, Debtor filed four Chapter 13 cases, all of which were dismissed within one year.

On August 5, 2016, Elizabeth Baker ("Debtor") filed a Chapter 13 voluntary petition. On October 26, 2016, Debtor's Chapter 13 plan was confirmed. On June 9, 2017, unaware that she was ineligible for a Chapter 7 discharge, Debtor converted her case to Chapter 7. On July 24, 2017, Debtor filed a motion to reconvert to Chapter 13.

DISCUSSION

11 U.S.C. § 706(a) states: "The debtor may convert a case under this chapter to a case

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CONT... Elizabeth T Baker

Chapter 7

under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title." Here, Debtor's case was previously converted under § 1307.

"Courts are divided as to whether the debtor can re-convert a case that has been previously converted." Ginsberg & Martin on Bankruptcy § 12.13[A] (5th ed. 2017-2); *see also In re Masterson*, 141 B.R. 84, 87 (Bankr. E.D. Pa. 1992) ("The courts appear to be evenly divided on the issue of whether a 'second conversion' of a case previously converted to Chapter 7 is ever permissible.") (collecting cases). The courts that have determined that § 706(a) bars subsequent reconversion have primarily relied upon the plain language of the statute, but have also considered the legislative history. *See In re Banks*, 252 B.R. 399, 400 (Bankr. E.D. Mich. 2000). One court has stated the following:

Unfortunately, for the debtor, the language of Section 706 clearly bars a debtor from converting a case from Chapter 7 to Chapter 13 more than once. Subsection (a) of that section states in relevant part that a "debtor may convert a case under this chapter to a case under Chapter 11 or 13 of this title at any time, if the case has not been converted under Section 1112 or 1307 of this title. The language of this statute is not discretionary. By its plain meaning it bars the debtor from this second attempt at conversion. Moreover, there is no case law supporting a discretionary right. At least one other bankruptcy court has arrived at this conclusion, *In re Bumpass*, 28 B.R. 597 (Bankr. S.D.N.Y. 1983), and this Court shares that view.

In re Nimai Kumar Ghosh, 38 B.R. 600, 603 (Bankr. E.D.N.Y. 1984) (footnote omitted).

As the court implicitly concluded in *Nimai Kumar Ghosh*, the phrase appears "if the case has not been converted" appears to modify the entirety of the first clause, not simple the language "at any time." The phrase "at any time" is not set off from the remainder of the clause in any fashion. Therefore, §706(a) is only applicable if the case has not been converted previously. The remaining question is, if § 706(a) is inapplicable, can the Debtor resort to any other mechanism in order to convert her

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CONT... Elizabeth T Baker
case?

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Courts that have permitted a reconversion appear to fall into two categories. First, some courts appear to believe that, when § 706(a) is inapplicable, the default position is that the Court has discretion to allow conversion based on policy grounds. *See, e.g., In re Masterson*, 141 B.R. at 88. Other courts have turned to § 706(c). *See, e.g., Matter of Johnson*, 116 B.R. 224, 225 (Bankr. Idaho 1990); *In re Sensibaugh*, 9 B.R. 45, 46 (Bankr. E.D. Va. 1981). Section 706(c) states: "[t]he court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests or consents to such conversion." While the plain language of § 706(c) indicates that it operates as a restraint on the court's authority, not as a source of authority, courts that have utilized this provision appear to conclude that if the debtor consents to or requests conversion, the court has discretion to permit such conversion.

A third possibility is that a debtor could seek voluntary dismissal or conversion under § 707, consent to conversion, and allow the Court to determine whether dismissal or conversion was more appropriate in the circumstances. This approach would have the disadvantage of possibly resulting in dismissal of the case, but it would seem to solve the statutory interpretation issues encountered by the alternative approaches.

Nevertheless, the Court need not determine whether reconversion is permitted under § 706(a) because, if the Court were to conclude that reconversion is discretionary, Debtor has not demonstrated that the exercise of such discretion would be appropriate. Debtor has had four Chapter 13 cases dismissed in the previous five years. More importantly, at the time Debtor converted to Chapter 7, there was an outstanding motion to dismiss pending for failure to make plan payments. Debtor appears to have chosen to convert the case to Chapter 7 rather than resolve the Chapter 13 Trustee's pending motion to dismiss.

Given Debtor's history in bankruptcy, the absence of any legal argument in Debtor's motion, and the absence of any evidence suggesting a change in circumstances which would allow Debtor to be successful in a Chapter 13 proceeding, the reconversion of the case, even if the Court were to conclude that such reconversion was legally

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CONT... **Elizabeth T Baker**
permissible, would be inappropriate.

Chapter 7

TENTATIVE RULING

The Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Elizabeth T Baker

Represented By
Nancy Korompis

Movant(s):

Elizabeth T Baker

Represented By
Nancy Korompis

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

6:16-17911 Elizabeth T Baker

Chapter 7

#5.00 Amended Motion to Vacate Order that Converted Case to Chapter 7 from Chapter 13

Also #4

EH__

Docket 98

***** VACATED *** REASON: CONTINUED TO 9/28/17 AT 12:30 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elizabeth T Baker

Represented By
Nancy Korompis

Movant(s):

Elizabeth T Baker

Represented By
Nancy Korompis

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

6:16-17768 Dispatch Transportation LLC

Chapter 7

#6.00 CONT Motion For Order Approving Sale of Estate Property subject to Overbid pursuant to 11 U.S.C Sect 363
(Holding Date)

From: 7/31/17, 8/28/17

EH__

Docket 82

***** VACATED *** REASON: WITHDRAW OF MOTION FILED 9/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dispatch Transportation LLC

Represented By
Leonard M Shulman
Elyza P Eshaghi

Movant(s):

Charles W Daff (TR)

Represented By
Toan B Chung

Trustee(s):

Charles W Daff (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
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Wednesday, September 27, 2017

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11:00 AM

6:16-17389 William Mark Eddington

Chapter 7

#7.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 49

Tentative Ruling:

9/27/17

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1,950
Trustee Expenses: \$ 414.51

Tax Preparer: \$1,000

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

William Mark Eddington

Represented By
Jenny L Doling

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

6:16-16352 Gena Grossman

Chapter 7

#8.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 53

Tentative Ruling:

9/27/17

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1,527.75

Trustee Expenses: \$ 204.64

Tax Preparer: \$1,000

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Gena Grossman

Represented By
Robert L Firth

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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6:16-15004 Barbara Ellen Dunn-Leonard

Chapter 7

#9.00 CONT Chapter 7 Trustee's Motion for Order Compelling Turnover of Debtor's Books and Records

From: 8/2/17

EH__

Docket 35

***** VACATED *** REASON: ORDER ENTERED 9/20/17**

Tentative Ruling:

08/02/2017

Factual Background

On June 3, 2016 ("Petition Date"), Barbara Ellen Dunn-Leonard ("Debtor") filed a chapter 7 petition. Discharge was granted on September 12, 2016. Larry D. Simons ("Trustee") is the duly appointed chapter 7 trustee.

Debtor's Schedule A/B lists Debtor's interest in a whole-life-policy-with-an-irrevocable-trust, Barbara Dunn-Leonard Insurance Trust ("Policy"). The beneficiaries to the Policy are listed as Ralph Edwards Production ("Ralph Edwards"), Daughter, and Son. The Policy has a cash value of \$120,949.35. Debtor claims a \$14,325.00 exemption pursuant to C.C.P. § 703.140 (b)(8) and a \$18,149.00 exemption pursuant to C.C.P. § 703.140 (b)(5) on the Policy.

On October 7, 2016, Trustee sent an e-mail to Debtor's counsel, Leslie K. Kaufman. In said e-mail Trustee asked "if there were any documents which would evidence the security interest in the life insurance policy as asserted by the debtor?" ("October 7 E-mail"). Trustee alleges that no response was received. Trustee then e-mailed Debtor's counsel again on April 28, 2017 with a similar inquiry ("April 28 E-mail"). Trustee alleges no response was received from Debtor's counsel regarding the April 28 E-mail. Trustee concedes that he is in possession of the Policy.

On July 5, 2016, Trustee filed a Motion for Order Compelling Turnover of Debtor's Books and Records ("Motion"). Trustee alleges that Debtor has failed to

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CONT... **Barbara Ellen Dunn-Leonard**

Chapter 7

comply with 11 U.S.C. §§ 521 and 542. Trustee requests that the Court compel Debtor to turnover books and records relating or pertaining to the Debtor's interest in the cash surrender value of the Property and books and records relating to or pertaining to the security interest of Ralph Edwards in and to the Policy and its cash surrender value.

Opposition

On July 19, 2017, Debtor filed an opposition ("Opposition") to Trustee's Motion. Debtor asserts that Trustee's Motion is improper and a misrepresentation of the events leading to the Motion. Debtor asserts that she has fully complied with each of Trustee's requests and there is no other information or documents to be turned over. Debtor asserts that, through counsel, she has spent more than a year trying to determine whether Debtor could do anything else to assist Trustee. Debtors attempts were ignored by Trustee and Trustee's counsel.

In support of Debtor's Opposition, Debtor provides as evidence a series of e-mails. The e-mails are outlined below:

Date	Sender	Content
07/08/2016	Debtor's Counsel	E-mail containing letter explaining Ralph Edwards' interest in the trust, as well as the 2015 Policy statement
10/07/2016	Trustee	Request for any further information about the Policy/Trust
10/11/2016	Debtor's Counsel	Debtor is unaware of any security interest documents outside those set forth in the Trust
11/29/2016	Debtor's Counsel	Request for call to discuss the Trust
11/29/2016	Trustee's Counsel	Counsel states "I will reach out to you in the next day or so"
12/13/2016	Debtor's Counsel	Counsel states "I have still not received any communication from you other than your email of November 29th. Please call me at your earliest convenience."

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CONT... Barbara Ellen Dunn-Leonard

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12/13/2016	Trustee's Counsel	Counsel states "I left a voicemail for you a week or two ago, I cannot recall. I will reach out again, but you can always send me an email with your inquiry and I will respond."
12/13/2016	Debtor's Counsel	Counsel writes "There was no voicemail message. My November 28 th email appears at the bottom of this chain below. Please call me at your earliest convenience."
04/28/2016	Debtor's Counsel	Counsel writes " Despite the passage of almost six months I have still not received any substantive communication from you. I left messages on your voicemail on March 15, 2017 at 4:40 PM; and on April 26,2017 at 12:01 PM, but have yet to receive a return call. Please contact me at your earliest convenience so that we may discuss the above referenced bankruptcy matter."

Each e-mail sent by Debtor's counsel was sent to the attorney of record for Trustee as well as to the Trustee. Debtor's counsel also requested to be advised if there had been a change of counsel or if it was best to communicate directly with Trustee.

Furthermore, Debtor asserts that Trustee's representation that Debtor never responded to the request made via the October 7 E-mail is incorrect. Debtor responded to the request on October 11, 2017. Debtor also contends that the April 28 E-mail presented by Trustee in the Motion, was in fact a response to an e-mail sent by Debtor's counsel and not a stand-alone inquiry made by Trustee.

Debtor requests that the Court award attorney fees and costs needed to oppose the Motion.

Reply

On July 26, 2017, the Trustee filed his reply to the Opposition asserting, correctly, that no direct evidence has been provided to support the explanations

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CONT... **Barbara Ellen Dunn-Leonard**
referenced by Debtor's Counsel in her declaration.

Chapter 7

Discussion

A. Motion for Order Compelling Turnover of Records

A debtor must cooperate with the trustee as necessary to enable the trustee to perform his statutory duties. 11 U.S.C. § 521(a)(3). Among those duties is the trustee's duty to "collect and reduce to money the property of the estate for which the trustee serves, and close the estate as expeditiously as is compatible with the best interests of parties in interest." 11 U.S.C. § 704 (a)(1). Furthermore the trustee must "investigate the financial affairs of the debtor." 11 U.S.C § 704 (a)(4).

A debtor must surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers relating to the property of the estate. 11 U.S.C. § 521(a)(4). Property of the estate includes "all legal or equitable interests of the debtor is property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Life insurance policies are not excluded from becoming part of the bankruptcy estate. *Gladstone v. U.S. Bancorp*, 811 F.3d 1133, 1140 (9th Cir. 2016).

Here, Debtor has presented in her Schedule A/B the Policy with a cash value of \$120,949.35. Pursuant to 11 U.S.C. § 541(a)(1), the Policy is property of the estate. Debtor must surrender all books, document, records and papers relating to the Policy pursuant to 11 U.S.C. § 521(a)(4). Debtor asserts all documents have been surrendered.

Under 11 U.S.C. § 542(a), an entity in "possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a). Trustee asserts that Debtor has failed comply with § 542 in that she has failed to deliver to Trustee the records pertaining to the Policy, Debtor's interest in the cash value, and Ralph Edwards' interest in the Policy.

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CONT...

Barbara Ellen Dunn-Leonard

Chapter 7

Trustee concedes that he is in possession of the Policy and the irrevocable trust. However, Trustee alleges that he needs to review any records pertaining to Ralph Edwards' interest in the Policy in order to determine the validity of Ralph Edwards' interest in the Policy. According to Trustee, Debtor has failed to cooperate with Trustee and those documents have been denied to him. Furthermore, Trustee needs the additional records to determine if Ralph Edwards' interest is a preferential transfer or a fraudulent conveyance. This information is relevant to a determination of whether Ralph Edwards' interest may be avoided for the benefit of the estate.

Debtor alleges that all documents requested by Trustee were turned over to Trustee on July 8, 2017. Debtor contends that there are no other documents which can be provided to Trustee and Trustee was informed of this on October 11, 2017. However, the Trustee correctly points out that the Debtor has not provided direct evidence from the Debtor regarding the underlying facts asserted in the Opposition. Specifically, the Opposition provides only second-hand hearsay evidence by Debtor's counsel regarding the non-existence of documents responsive to the Trustee's request for turnover and although the Opposition purports to provide an explanation of the facts surrounding the grant of a security interest to Ralph Edwards Productions by the Debtor in her Life Insurance Trust, there is no declaration by the Debtor to support these facts nor is Counsel able to testify to their veracity.

B. Debtor's Request for Attorney's Fees and Cost

Debtor fails to provide any statutory authority under which attorney's fees and costs may be awarded. Thus, this request is denied.

Tentative Ruling

Based on the foregoing, the Court is inclined to GRANT the Trustee's Motion and order turnover of the documents. Alternatively, the Court may set the matter for an evidentiary hearing for the Debtor to testify regarding the facts described in the Opposition.

APPEARANCES REQUIRED.

Party Information

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CONT... Barbara Ellen Dunn-Leonard

Chapter 7

Debtor(s):

Barbara Ellen Dunn-Leonard

Represented By
Leslie K Kaufman

Movant(s):

Larry D Simons (TR)

Represented By
Daniel A Lev

Trustee(s):

Larry D Simons (TR)

Represented By
Daniel A Lev

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11:00 AM

6:16-14026 Victor Manuel Monterroso and Maria Hilda Monterroso

Chapter 7

#10.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 50

Tentative Ruling:

9/27/17

No opposition has been filed.
Service was Proper.

The applications for compensation of the Trustee and Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 3,181.00
Trustee Expenses: \$ 357.94

Accountant Fees: \$ 3,557.50
Accountant Costs: \$ 514.16

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Victor Manuel Monterroso

Represented By
Timothy S Huyck

Joint Debtor(s):

Maria Hilda Monterroso

Represented By
Timothy S Huyck

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CONT... Victor Manuel Monterroso and Maria Hilda Monterroso

Chapter 7

Trustee(s):

Lynda T. Bui (TR)

Pro Se

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Hearing Room 303

11:00 AM

6:17-15816 Integrated Wealth Management Inc

Chapter 7

#11.00 Landlords Notice of Motion and Motion for Order Re: Allow and Authorize Immediate Payment of One El Paseo North, LLCs Gap Rent Claim under Section 502(f) of the Bankruptcy Code

EH__

Docket 29

Tentative Ruling:

9/27/17

BACKGROUND

On July 12, 2017, an involuntary Chapter 7 petition was filed against Integrated Wealth Management, Inc. ("Debtor"). After an extension of the applicable deadline, Debtor filed its answer on September 12, 2017.

Prior to the answer being filed, One El Paseo North, LLC ("Landlord") filed a motion for immediate payment of its gap rent claim pursuant to § 502(f). Landlord asserts that it holds a gap rent claim totaling \$27,776.73, covering the time period between the filing of the involuntary petition, on July 12, 2017, and the time Debtor abandoned the premises, on August 18, 2017.

DISCUSSION

11 U.S.C. § 502(f) states:

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CONT... Integrated Wealth Management Inc

Chapter 7

(f) In an involuntary case, a claim arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of the appointment of a trustee and the order for relief shall be determined as of the date such claim arises, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

While Landlord is correct that the Bankruptcy Code allows payment of ordinary course business claims that accrue during the gap period, it is unclear what the legal justification is for Landlord's request that the Court order the gap claim to be paid immediately. 11 U.S.C. § 507(a)(3) specifically affords debts incurred pursuant to § 502(f) third-priority status. If the estate is administratively insolvent, or does not have funds to pay all first, second, and third-priority claims, then Landlord would not receive full payment of its claim. Because Landlord may not receive full payment of its claim, it would be inappropriate to order immediate payment of its claim.

Debtor further objects to the issuance of an order allowing Landlord's claim, asserting that a motion to allow a claim for an unpaid § 502(f) claim is procedurally improper. The Court disagrees with Debtor's contention that a party cannot seek allowance of an administrative claim separate from filing a proof of claim. As an order for relief has not yet been entered, however, the relief requested is premature, since, among other things, a Chapter 7 trustee has not had the opportunity to vet the request. As an aside, the Court notes that Landlord has filed a proof of claim, but it did not request administrative priority.

TENTATIVE RULING

The Court will DENY the motion.

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CONT... Integrated Wealth Management Inc

Chapter 7

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

Movant(s):

One El Paseo North, LLC

Represented By
Thomas J Polis

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Wednesday, September 27, 2017

Hearing Room 303

11:00 AM

6:13-26277 Charles Frederick Biehl

Chapter 7

#12.00 Chapter 7 Trustee's Motion to Approve Compromise Under Rule 9019 Between the Bankruptcy Estate and Rene Clements-Biehl

EH__

Docket 213

Tentative Ruling:

9/27/17

BACKGROUND

On September 30, 2013, Charles Biehl ("Debtor") filed a Chapter 7 voluntary petition. On September 21, 2015, Trustee filed an adversary proceeding against Rene Clements-Biehl ("Defendant") for: (1) avoidance and recovery of intentional fraudulent transfer; (2) avoidance and recovery of constructively fraudulent transfer; (3) avoidance and recovery of preferential transfer; (4) disallowance of claims; (5) unjust enrichment; (6) declaratory relief. The subject of the adversary proceeding was certain real property located at 6 Dover Ct., Rancho Mirage, CA 92270 and 3338 Tempe Dr., Huntington Beach, CA 92649, and certain furniture located therein.

According to Trustee, pursuant to a marital settlement agreement, a state court entered a judgment confirming a property division on October 30, 2012. Later, on November 21, 2012, Debtor transferred to Defendant the real property located in Huntington Beach pursuant to an interspousal grant deed.

On August 15, 2017, Trustee filed a motion to approve compromise pursuant to Fed. R. Bankr. P. Rule 9019. Trustee proposes to settle the adversary proceeding for either payment of \$229,000 within four months, or payment of \$256,000 over four years. On

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CONT... **Charles Frederick Biehl**
September 7, 2017, the matter was set for hearing.

Chapter 7

DISCUSSION

Fed. R. Bankr. P. Rule 9019 provides that:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

The Ninth Circuit Court of Appeals have previously outlined the factors to be considered in approving a compromise pursuant to Rule 9019: (1) the probability of success in the litigation; (2) the difficulties to be encountered in the matter of collection; (3) the complexity, expense, inconvenience and delay of litigation; and (4) the interest of creditors with deference to their reasonable. *See In re A&C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The listed factors assist the Court in determining "the fairness, reasonableness and adequacy of a proposed settlement agreement." *Id.*

Trustee's compromise motion does not provide the information the Court requires to apply the *A&C Properties* factors or to assess the reasonableness of the settlement because the motion fails to identify the value of the Property or estimate the value of Debtor's interest in the property, rendering it impossible to determining the reasonableness of the settlement amount.

In the absence of any evidence regarding the value of the Property or the value of the community estate's interest in the Property, the Court cannot approve the compromise

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CONT... Charles Frederick Biehl
when only general arguments have advanced in support of the compromise.

Chapter 7

TENTATIVE RULING

The Court is inclined to CONTINUE the matter for Trustee to file a supplemental declaration.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Charles Frederick Biehl

Represented By
Daryl L Binkley - DISBARRED -
Steven L Bryson

Movant(s):

John P Pringle (TR)

Represented By
James C Bastian Jr
Elyza P Eshaghi
Brandon J Iskander
Lynda T Bui

Trustee(s):

John P Pringle (TR)

Represented By
James C Bastian Jr
Elyza P Eshaghi
Brandon J Iskander
Lynda T Bui

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6:16-13311 Jose Antonio Hernandez
Adv#: 6:16-01176 Simons v. Navarro

Chapter 7

#13.00 CONT Status Conference RE: Complaint to Avoid and Recover Fraudulent Transfer

From: 9/7/16, 11/9/16, 1/11/17, 3/8/17, 4/12/17, 5/17/17, 6/7/17, 7/26/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Antonio Hernandez

Represented By
Jessica De Anda Leon

Defendant(s):

Carolina Villalobos Navarro

Represented By
Christopher J Langley

Plaintiff(s):

Larry D Simons

Represented By
Frank X Ruggier

Trustee(s):

Larry D Simons (TR)

Represented By
Frank X Ruggier

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6:14-16813 M. A. Tabor

Chapter 7

Adv#: 6:16-01128 Frealy v. Trotochau et al

#14.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01128. Complaint by Todd A. Frealy against Robin Sherrie Trotochau, Pacific Mortgage Exchange, Inc.. (Charge To Estate). - Complaint: (1) For Breach Of Contract; (2) For Common Counts; (3) To Avoid And Recover Fraudulent Transfers; And (4) To Preserve Recovered Transfers For Benefit Of Debtor's Estate (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

From: 7/20/16, 9/28/16, 1/11/17, 3/8/17, 6/7/17, 8/23/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

M. A. Tabor

Represented By
Judith Runyon

Defendant(s):

Pacific Mortgage Exchange, Inc.

Represented By
Salvatore Bommarito

Robin Sherrie Trotochau

Pro Se

Plaintiff(s):

Todd A. Frealy

Represented By
Anthony A Friedman

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CONT... M. A. Tabor

Chapter 7

Trustee(s):

Todd A. Frealy (TR)

Represented By
Anthony A Friedman
Lindsey L Smith

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2:00 PM

6:14-14377 Hilary D Hill

Chapter 7

Adv#: 6:15-01206 Speier v. Simmons et al

#15.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01206. Complaint by Steven M Speier against Angela Simmons, David Schanhals, Hilary D Hill

From: 9/23/15, 2/10/16, 5/25/16, 9/28/16, 11/16/16, 1/11/17, 3/29/17, 6/28/17, 8/30/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hilary D Hill

Represented By
Matthew D Resnik

Defendant(s):

Hilary D Hill

Represented By
David Brian Lally

David Schanhals

Represented By
David Brian Lally

Angela Simmons

Represented By
David Brian Lally

Plaintiff(s):

Steven M Speier

Represented By
Robert P Goe

Trustee(s):

Steven M Speier (TR)

Represented By

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CONT...

Hilary D Hill

Robert P Goe

Elizabeth A LaRocque

Chapter 7

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2:00 PM

6:14-12990 Garrick Craig Smedman

Chapter 7

Adv#: 6:17-01121 Smedman et al v. STATE BOARD OF EQUALIZATION

#16.00 OSC why case should not be dismissed for failure to prosecute

Also #17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Garrick Craig Smedman

Represented By
Neil C Evans

Defendant(s):

STATE BOARD OF

Pro Se

Joint Debtor(s):

Veronica Lee Wilkins

Represented By
Neil C Evans

Plaintiff(s):

Veronica Lee Wilkins

Pro Se

Craig Smedman

Represented By
Neil C Evans

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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6:14-12990 Garrick Craig Smedman

Chapter 7

Adv#: 6:17-01121 Smedman et al v. STATE BOARD OF EQUALIZATION

#17.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01121. Complaint by Craig Smedman against STATE BOARD OF EQUALIZATION. (Fee Not Required \$350.00). Joint Plaintiff Veronica Lee Wilkins Nature of Suit: (91 (Declaratory judgment)),(72 (Injunctive relief - other))

From: 8/30/17

Also #16

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Garrick Craig Smedman

Represented By
Neil C Evans

Defendant(s):

STATE BOARD OF

Pro Se

Joint Debtor(s):

Veronica Lee Wilkins

Represented By
Neil C Evans

Plaintiff(s):

Veronica Lee Wilkins

Pro Se

Craig Smedman

Represented By
Neil C Evans

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CONT... Garrick Craig Smedman

Chapter 7

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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2:00 PM

6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#18.00 CONT Motion For Summary Judgment/Memorandum of Points and Authorities on the Preclusive Effect of Plaintiff's State Court Judgment
HOLDING DATE

From: 6/7/17, 7/12/17, 8/2/17

Also #19

EH__

Docket 208

***** VACATED *** REASON: CONTINUED TO 10/4/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi
Ryan F Thomas

Movant(s):

Charles Edward Schrader

Pro Se

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#19.00 CONT Status Conference RE: Adversary case 6:13-ap-01171. Complaint by Charles Edward Schrader against Narinder Sangha . willful and malicious injury
HOLDING DATE

From: 7/8/15, 11/4/15, 3/2/16, 12/14/16, 12/13/17, 4/5/17, 6/7/17, 7/12/17, 8/2/17

Also #18

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 10/4/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi
Ryan F Thomas

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

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12:30 PM

6:16-17911 Elizabeth T Baker

Chapter 7

#1.00 CONT Amended Motion to Vacate Order that Converted Case to Chapter 7 from Chapter 13

From: 9/27/17

Also #2

EH__

Docket 98

Tentative Ruling:

09/28/2017

BACKGROUND

On August 5, 2016, Elizabeth Baker ("Debtor") filed her petition for chapter 13 relief. The Debtor's chapter 13 plan was confirmed on October 26, 2016. Rod Danielson was the duly appointed chapter 13 trustee ("Trustee"). On June 9, 2017, the Debtor filed a motion to convert the case from a chapter 13 to a case under chapter 7. The case was converted by the Court on the same date, pursuant to §1307(a) (the "Conversion Order").

On July 11, 2017, the Court issued to the Debtor a Notice of non-entitlement to discharge pursuant to 11 U.S.C. § 727(a)(8) or (9) because the Debtor had received a chapter 7 discharge in March 2011.

On July 24, 2017, the Debtor filed a motion to reconvert the case to a case under chapter 13. At the hearing on the Motion to Reconvert, the Court noted that courts are divided regarding a Debtor's ability to reconvert and, separately, noted that even assuming the Court was convinced that reconversion was authorized under §706, that the Debtor's filing history and the absence of a change in financial circumstances weighed against conversion. The Court, however, permitted the Debtor an opportunity to file a motion to seek to vacate the conversion order.

On September 6, 2017, the Debtor filed a motion to vacate the Conversion

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CONT... Elizabeth T Baker

Chapter 7

Order ("Motion"). The Motion includes a declaration by the Debtor's counsel in which she concedes that in filing the motion to convert, she did not take into account the Debtor's prior filings and as a result did not realize that the Debtor would not be entitled to a discharge in a chapter 7 case.

DISCUSSION

The Court may find grounds to vacate the Conversion Order based on the Debtor's counsel's declaration and a finding that "excusable neglect" resulted in the conversion. However, the Court is concerned that the Debtor is not able to continue making payments in a reconverted chapter 13. Specifically, when the Debtor's case was converted, a motion to dismiss was already pending for a \$576 delinquency as of May 31, 2017. Additionally, on June 13, 2017 (presumably before realizing the case had been converted), the Trustee filed a Motion to Dismiss the chapter 13 case for failure to submit 2016 Federal and State Tax Returns and any corresponding refunds due to the Trustee.

TENTATIVE RULING

The Court is inclined to GRANT the Motion conditioned on the Debtor curing the issues raised by the Trustee in his prior motions to dismiss and in the Debtor's counsel holding sufficient certified funds to bring the plan current.

However, the Court notes that the Motion was not served on any of the Debtor's creditors. As such, the Court is inclined to CONTINUE the hearing for proper service on creditors and for Debtor to file a supplemental declaration indicating it is prepared to cure the issues outlined herein.

APPEARANCES REQUIRED.

09/28/2017

BACKGROUND

On August 5, 2016, Elizabeth Baker ("Debtor") filed her petition for chapter 13 relief. The Debtor's chapter 13 plan was confirmed on October 26, 2016. Rod Danielson was the duly appointed chapter 13 trustee ("Trustee"). On June 9, 2017, the Debtor filed a motion to convert the case from a chapter 13 to a case under chapter 7. The case was converted by the Court on the same date, pursuant to §1307(a) (the "Conversion Order").

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CONT... Elizabeth T Baker

Chapter 7

On July 11, 2017, the Court issued to the Debtor a Notice of non-entitlement to discharge pursuant to 11 U.S.C. § 727(a)(8) or (9) because the Debtor had received a chapter 7 discharge in March 2011.

On July 24, 2017, the Debtor filed a motion to reconvert the case to a case under chapter 13. At the hearing on the Motion to Reconvert, the Court noted that courts are divided regarding a Debtor's ability to reconvert and, separately, noted that even assuming the Court was convinced that reconversion was authorized under §706, that the Debtor's filing history and the absence of a change in financial circumstances weighed against conversion. The Court, however, permitted the Debtor an opportunity to file a motion to seek to vacate the conversion order.

On September 6, 2017, the Debtor filed a motion to vacate the Conversion Order ("Motion"). The Motion includes a declaration by the Debtor's counsel in which she concedes that in filing the motion to convert, she did not take into account the Debtor's prior filings and as a result did not realize that the Debtor would not be entitled to a discharge in a chapter 7 case.

DISCUSSION

The Court may find grounds to vacate the Conversion Order based on the Debtor's counsel's declaration and a finding that "excusable neglect" resulted in the conversion. However, the Court is concerned that the Debtor is not able to continue making payments in a reconverted chapter 13. Specifically, when the Debtor's case was converted, a motion to dismiss was already pending for a \$576 delinquency as of May 31, 2017. Additionally, on June 13, 2017 (presumably before realizing the case had been converted), the Trustee filed a Motion to Dismiss the chapter 13 case for failure to submit 2016 Federal and State Tax Returns and any corresponding refunds due to the Trustee.

TENTATIVE RULING

The Court is inclined to GRANT the Motion conditioned on the Debtor curing the issues raised by the Trustee in his prior motions to dismiss and in the Debtor's counsel holding sufficient certified funds to bring the plan current.

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CONT... Elizabeth T Baker

Chapter 7

However, the Court notes that the Motion was not served on any of the Debtor's creditors. As such, the Court is inclined to CONTINUE the hearing for proper service on creditors and for Debtor to file a supplemental declaration indicating it is prepared to cure the issues outlined herein.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Elizabeth T Baker

Represented By
Nancy Korompis

Trustee(s):

John P Pringle (TR)

Pro Se

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12:30 PM

6:16-17911 Elizabeth T Baker

Chapter 7

#2.00 CONT Motion to Convert Case From Chapter 7 to Chapter 13

From: 8/23/17, 9/27/17

Also #1

EH__

Docket 92

Tentative Ruling:

8/23/17

BACKGROUND

Debtor obtained a discharge in a Chapter 7 case filed on November 30, 2010. Between February 14, 2013 and September 18, 2015, Debtor filed four Chapter 13 cases, all of which were dismissed within one year.

On August 5, 2016, Elizabeth Baker ("Debtor") filed a Chapter 13 voluntary petition. On October 26, 2016, Debtor's Chapter 13 plan was confirmed. On June 9, 2017, unaware that she was ineligible for a Chapter 7 discharge, Debtor converted her case to Chapter 7. On July 24, 2017, Debtor filed a motion to reconvert to Chapter 13.

DISCUSSION

11 U.S.C. § 706(a) states: "The debtor may convert a case under this chapter to a case

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CONT... Elizabeth T Baker

Chapter 7

under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title." Here, Debtor's case was previously converted under § 1307.

"Courts are divided as to whether the debtor can re-convert a case that has been previously converted." Ginsberg & Martin on Bankruptcy § 12.13[A] (5th ed. 2017-2); see also *In re Masterson*, 141 B.R. 84, 87 (Bankr. E.D. Pa. 1992) ("The courts appear to be evenly divided on the issue of whether a 'second conversion' of a case previously converted to Chapter 7 is ever permissible.") (collecting cases). The courts that have determined that § 706(a) bars subsequent reconversion have primarily relied upon the plain language of the statute, but have also considered the legislative history. See *In re Banks*, 252 B.R. 399, 400 (Bankr. E.D. Mich. 2000). One court has stated the following:

Unfortunately, for the debtor, the language of Section 706 clearly bars a debtor from converting a case from Chapter 7 to Chapter 13 more than once. Subsection (a) of that section states in relevant part that a "debtor may convert a case under this chapter to a case under Chapter 11 or 13 of this title at any time, if the case has not been converted under Section 1112 or 1307 of this title. The language of this statute is not discretionary. By its plain meaning it bars the debtor from this second attempt at conversion. Moreover, there is no case law supporting a discretionary right. At least one other bankruptcy court has arrived at this conclusion, *In re Bumpass*, 28 B.R. 597 (Bankr. S.D.N.Y. 1983), and this Court shares that view.

In re Nimai Kumar Ghosh, 38 B.R. 600, 603 (Bankr. E.D.N.Y. 1984) (footnote omitted).

As the court implicitly concluded in *Nimai Kumar Ghosh*, the phrase appears "if the case has not been converted" appears to modify the entirety of the first clause, not simple the language "at any time." The phrase "at any time" is not set off from the remainder of the clause in any fashion. Therefore, §706(a) is only applicable if the case has not been converted previously. The remaining question is, if § 706(a) is inapplicable, can the Debtor resort to any other mechanism in order to convert her

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Courts that have permitted a reconversion appear to fall into two categories. First, some courts appear to believe that, when § 706(a) is inapplicable, the default position is that the Court has discretion to allow conversion based on policy grounds. *See, e.g., In re Masterson*, 141 B.R. at 88. Other courts have turned to § 706(c). *See, e.g., Matter of Johnson*, 116 B.R. 224, 225 (Bankr. Idaho 1990); *In re Sensibaugh*, 9 B.R. 45, 46 (Bankr. E.D. Va. 1981). Section 706(c) states: "[t]he court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests or consents to such conversion." While the plain language of § 706(c) indicates that it operates as a restraint on the court's authority, not as a source of authority, courts that have utilized this provision appear to conclude that if the debtor consents to or requests conversion, the court has discretion to permit such conversion.

A third possibility is that a debtor could seek voluntary dismissal or conversion under § 707, consent to conversion, and allow the Court to determine whether dismissal or conversion was more appropriate in the circumstances. This approach would have the disadvantage of possibly resulting in dismissal of the case, but it would seem to solve the statutory interpretation issues encountered by the alternative approaches.

Nevertheless, the Court need not determine whether reconversion is permitted under § 706(a) because, if the Court were to conclude that reconversion is discretionary, Debtor has not demonstrated that the exercise of such discretion would be appropriate. Debtor has had four Chapter 13 cases dismissed in the previous five years. More importantly, at the time Debtor converted to Chapter 7, there was an outstanding motion to dismiss pending for failure to make plan payments. Debtor appears to have chosen to convert the case to Chapter 7 rather than resolve the Chapter 13 Trustee's pending motion to dismiss.

Given Debtor's history in bankruptcy, the absence of any legal argument in Debtor's motion, and the absence of any evidence suggesting a change in circumstances which would allow Debtor to be successful in a Chapter 13 proceeding, the reconversion of the case, even if the Court were to conclude that such reconversion was legally

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permissible, would be inappropriate.

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TENTATIVE RULING

The Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Elizabeth T Baker

Represented By
Nancy Korompis

Movant(s):

Elizabeth T Baker

Represented By
Nancy Korompis

Trustee(s):

John P Pringle (TR)

Pro Se

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6:16-19962 Fonda Cormier

Chapter 7

#3.00 Motion to vacate order or Reconvert to original Chapter 13

EH__

Docket 61

Tentative Ruling:

09/28/2017

BACKGROUND

On November 9, 2016, Fonda Cormier ("Debtor") filed her petition for chapter 13 relief. Rod Danielson was the duly appointed chapter 13 trustee ("Trustee"). The Debtor's chapter 13 plan was confirmed on December 28, 2016. On June 30, 2017, the Debtor filed a notice to conversion and the Court converted the case on the same date pursuant to § 1307(a) ("Conversion Order"). At approximately 4:23 p.m. of the same day, the Debtor sought to vacate the Conversion Order.

The Court set a hearing on the Debtor's motion to vacate the Conversion Order and issued a tentative ruling prior to the hearing indicating as follows:

As a preliminary matter, the proof of service included in Debtor's motion is not signed, and Debtor has not served all parties in interest pursuant to Local Rule 1017.

Additionally, Debtor's motion contains no legal standard or analysis. Relief from a judgment or order is governed by Fed. R. Civ. P. Rule 60, incorporated into bankruptcy proceedings by Fed. R. Bankr. P. Rule 9024. Debtor has not provided any argument relating to that standard.

Furthermore, the declaration of Debtor's attorney appears to misrepresent the factual situation. First, the reasons for Debtor converting to Chapter 7 are not given. The primary argument presented by Debtor in support of this motion is that counsel learned, after filing a notice of conversion and having further discussions with Trinity

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Fonda Cormier

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Financial, that Trinity Financial would likely file a motion for relief from stay if the case was converted to Chapter 7. Trinity Financial had, however, in fact filed a motion for relief from stay on May 9, 2017, and an order approving the stipulation of the parties was entered on June 27, 2017. Section 10 of that order states: "This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code." The parties chose not to include language that would provide for relief from stay upon conversion of the case. Therefore, it is unclear how the conversion of the case could have any effect on the automatic stay as it relates to Trinity Financial.

As an aside, the Court notes that Debtor is ineligible for a Chapter 7 discharge under § 727(a)(8) by virtue of a Chapter 7 discharge on September 25, 2009.

Tentative Ruling, August 31, 2017.

On June 6, 2017, the Debtor filed a new Motion to Vacate Order or to Reconvert to Original Chapter 13 ("Motion"). The Motion was filed by the Debtor's new counsel. The Motion indicates that the conversion was a mistake of prior counsel and that it was one which could have severe consequences for the Debtor.

DISCUSSION

The Court is cognizant, here, that the Debtor's chapter 13 plan was already confirmed and the mistake was clearly negligent on the part of her prior counsel. However, the Court further notes that a motion to dismiss filed by the Trustee was pending at the time of conversion for a delinquency of \$1,147.50.

TENTATIVE RULING

The Court is inclined to GRANT the request to vacate the conversion order conditioned upon the Debtor's ability to bring her plan current.

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Separately, based on the Debtor's assertion that she paid her prior counsel \$1,000 for the motion to convert her case to a chapter 7, the Court is inclined to issue on OSC re: disgorgement as to Phillip Myer.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Fonda Cormier

Represented By
Manfred Schroer

Trustee(s):

Robert Whitmore (TR)

Pro Se

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6:17-13922 John Empey and Madeleine Tappe

Chapter 13

#4.00 Motion to Disallow Claims #4 Bank of America N.A

EH__

Docket 18

Tentative Ruling:

09/28/2017

Background:

On May 10, 2017 ("Petition Date"), John Empey and Madeleine Tappe (collectively, the "Debtors") filed their petition for chapter 13 relief.

On August 23, 2017, the Debtors filed an Objection to Claim No. 4 (the "Objection") of Bank of America ("Claimant"). Service was proper and no opposition has been filed.

Claim #: 4

Amount: \$15,316.80

Objection:

The Debtors object to the claim on the basis that the statute of limitations for this claim has expired.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie*

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Chapter 13

evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *United States v. Offord Fin., Inc., (In re Medina)*, 205 B.R. 216,222 (9th Cir. BAP 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *Ashford v. Consol. Pioneer Mort. (In re Consol. Pioneer Mort.)*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *Lundell*, 223 F.3d at 1039; *Holm*, 931 F.2d at 623.

Analysis:

Rebuttal of the Prima Facie Proof of Claim

In this case, the Debtors assert that the Claim should be disallowed as time barred. Section 502(b)(1) provides that a claim is deemed allowed, unless such claim is unenforceable against the debtor and property of the debtor under applicable law. The statute of limitations applicable to common counts is four years if the action is founded upon a contract or other writing (e.g., "book account" (§ 3:398), "account stated" (§ 3:400), or money lent on a note), and the statute of limitations is generally four years from the date of the last item in the account. CCP § 337(1),(2); *Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co.*, 116 CA 4th 1375, 1396, FN. 9 (Cal.

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CONT... John Empey and Madeleine Tappe
App. 2004).

Chapter 13

Here, the Debtors have asserted under penalty of perjury that they have made no payments on the Claim since September 2012. Thus, the statute of limitations appears to have expired. Moreover, Claimant, though properly served, has failed to respond, which may be deemed as consent to the relief requested under LBR 9013-1(h). Thus, as the ultimate burden of persuasion remains on the Claimant, the Objection must be sustained.

Tentative Ruling

The Objection is SUSTAINED. Claim #4 is disallowed in its entirety.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

John Empey

Represented By
Christopher Hewitt

Joint Debtor(s):

Madeleine Tappe

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14150 Kaleo Mehia Roque Leopoldo and Andrea Ann Leopoldo

Chapter 13

#5.00 CONT Stipulation By BOPTI Federal Credit Union and Debtor for Adequate Protection Order (Non-Dischargeability of Debt)

From: 9/14/17

EH__

Docket 25

Tentative Ruling:

09/28/2017

The Court has reviewed the Errata Stipulation filed as Docket No. 38 and is satisfied that the Creditor shall receive payments pro rata with other creditors during the pendency of the Debtors' chapter 13 plan and that the amount to be paid thereafter is consistent with the \$400 in disposable income being paid now. Based on the foregoing, the Court is inclined to approve the Stipulation except that the Court finds the language excepting the debt from discharge unnecessary and duplicative given that a prior court has already approved language excepting the debt from discharge in future cases. The Stipulation is otherwise approved. Movant may lodge an order. APPEARANCES WAIVED.

Party Information

Debtor(s):

Kaleo Mehia Roque Leopoldo

Represented By
Nicholas M Wajda

Joint Debtor(s):

Andrea Ann Leopoldo

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15822 Alfredo Loera and Veronica O Loera

Chapter 13

#6.00 Motion to vacate dismissal

EH__

Docket 33

Tentative Ruling:

09/28/2017

BACKGROUND

On July 12, 2017, Alfredo and Veronica Loera (collectively, the "Debtors") filed their petition for chapter 13 relief. The Debtors' chapter 13 plan was confirmed on August 29, 2017. On September 11, 2017, the Court dismissed the Debtors' case for a failure to file copies of payment advices required under § 521(i)(1).

On September 14, 2017, the Debtors filed a Motion to Vacate Dismissal ("Motion") and an Application for Order Setting the hearing on shortened time. On September 15, 2017, the Court set the Motion for hearing on shortened time ("OST").

The Court notes several issues with the Notice of Hearing documents filed with the Court. Given the numerous notice filed, it is apparent that counsel for the Debtors realized that the creditors had not been properly served in accordance with the Court's OST. Nevertheless, the supplemental declaration of Paul Lee filed on September 26, 2017, indicates that creditors were served via overnight mail with the papers on September 21, 2017. The OST required service by overnight mail by September 15, 2017. However, given the nature of the dismissal based solely on the mistaken filing of pay advices, the Court is inclined to accept the service as sufficient under the circumstances.

DISCUSSION

Debtors' counsel, Paul Yee, by his declaration has indicated that as a result of his office's failure to choose the correct event code when filing the Debtors' pay stubs, the case was dismissed. The Court has confirmed that the pay advices were filed by the Debtors prior to the case dismissal on July 20, 2017 as Docket No. 22. As a result of the mistake indicated by the Debtors' counsel, Docket No. 22, references a

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CONT... Alfredo Loera and Veronica O Loera

Chapter 13

Notice of Section 341(a) meeting instead of the pay advices.

TENTATIVE RULING

The Court finds that the mistake which resulted in dismissal warrants a finding of excusable neglect. As such, the Court is inclined to GRANT the Motion and vacate the dismissal.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Alfredo Loera

Represented By
Paul Y Lee

Joint Debtor(s):

Veronica O Loera

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16945 Rickey Hernando Waddington and Elrena Victoria

Chapter 13

#7.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rickey Hernando Waddington

Represented By
Jonathan D Doan

Joint Debtor(s):

Elrena Victoria Waddington

Represented By
Jonathan D Doan

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16953 Marion Wright

Chapter 13

#8.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marion Wright

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16978 Jaime Gomez Vivanco and Yuriria Vivanco

Chapter 13

#9.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaime Gomez Vivanco

Represented By
Summer M Shaw

Joint Debtor(s):

Yuriria Vivanco

Represented By
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16980 Peter Lawrence Schenk

Chapter 13

#10.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 9/1/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Peter Lawrence Schenk

Represented By
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16994 Stasha Lauran Sill

Chapter 13

#11.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Stasha Lauran Sill

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17009 Angel Felix Ruiz and Gladis Del Rosario Ruiz

Chapter 13

#12.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angel Felix Ruiz

Represented By
Edward G Topolski

Joint Debtor(s):

Gladis Del Rosario Ruiz

Represented By
Edward G Topolski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17032 Anna C. Hopson and George E. Hopson

Chapter 13

#13.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna C. Hopson

Represented By
Julie J Villalobos

Joint Debtor(s):

George E. Hopson

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17044 Richard Ramirez

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Ramirez

Represented By
Danny K Agai

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17060 Antonio Silveria Lourenco

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antonio Silveria Lourenco

Represented By
Neil R Hedtke

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17061 Louise Laster

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Louise Laster

Represented By
Neil R Hedtke

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17083 Ruben O. Perez

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 8/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ruben O. Perez

Represented By
W. Derek May

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17085 Paulette M Gonzales

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paulette M Gonzales

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17086 Bryan Dale Reid and Cristi Mishael Reid

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bryan Dale Reid

Represented By
Paul Y Lee

Joint Debtor(s):

Cristi Mishael Reid

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17087 Eugene Myers and Deborah Myers

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 9/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eugene Myers

Represented By
Paul Y Lee

Joint Debtor(s):

Deborah Myers

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17134 Noel Mallari

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Noel Mallari

Represented By
David L Nelson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-16974 Thomas Milton Bell and Guadalupe Bell

Chapter 13

#21.10 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Milton Bell

Represented By
Ronald W Ask

Joint Debtor(s):

Guadalupe Bell

Represented By
Ronald W Ask

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:15-14680 Jose Jesus Reveles and Joanna Reveles

Chapter 13

#22.00 Trustee's Motion to Dismiss Case

EH__

Docket 41

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/5/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Jesus Reveles

Represented By
Donald M Medeiros

Joint Debtor(s):

Joanna Reveles

Represented By
Donald M Medeiros

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:15-15970 David Anthony Lopez, Jr. and Linda Cristine Lopez

Chapter 13

#23.00 Trustee's Motion to Dismiss Case

EH__

Docket 53

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Anthony Lopez Jr.

Represented By
Heather J Canning
Barry E Borowitz

Joint Debtor(s):

Linda Cristine Lopez

Represented By
Heather J Canning
Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-11872 Garan Bales

Chapter 13

#24.00 Trustee's Motion to Dismiss Case

EH__

Docket 89

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/26/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Garan Bales

Represented By
Amanda G Billyard
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 28, 2017

Hearing Room 303

12:31 PM

6:16-12008 Darna Poole and Jerry Poole

Chapter 13

#25.00 CONT Trustee's Motion to Dismiss Case

From: 9/14/17

EH__

Docket 44

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/25/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Darna Poole

Represented By
Todd B Becker

Joint Debtor(s):

Jerry Poole

Represented By
Todd B Becker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, September 28, 2017

Hearing Room 303

12:31 PM

6:16-13233 Sherry Ann Beardsley

Chapter 13

#26.00 CONT Trustee's Motion to Dismiss Case

From: 8/17/17, 9/14/17

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sherry Ann Beardsley

Represented By
Jeffrey D Larkin

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, October 02, 2017

Hearing Room 303

11:00 AM

6:11-12917 Brad Stoddard and Deborah Ann Stoddard

Chapter 13

#1.00 CONT Motion For Order To Show Cause Why Creditor American Educational Services and Educational Credit Management Corporation Should Not Be Held in Contempt of Court, and For Damages and Attorney's Fees, for Intentionally Violating The Discharge Injunction

From: 7/27/17

Also #2

EH__

Docket 96

Party Information

Debtor(s):

Brad Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Joint Debtor(s):

Deborah Ann Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Movant(s):

Deborah Ann Stoddard

Represented By
Matthew D Resnik
Matthew D Resnik
David Brian Lally
David Brian Lally

Brad Stoddard

Represented By
Matthew D Resnik
Matthew D Resnik
David Brian Lally

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, October 02, 2017

Hearing Room 303

11:00 AM

CONT... Brad Stoddard and Deborah Ann Stoddard

Chapter 13

David Brian Lally

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By

Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, October 02, 2017

Hearing Room 303

11:00 AM

6:11-12917 Brad Stoddard and Deborah Ann Stoddard

Chapter 13

#2.00 CONT Order to Show Cause Hearing Why Matthew Resnik, Brad and Deborah Stoddard should not be sanctioned
(Holding date)

From: 8/31/17

Also #1

EH__

Docket 110

Party Information

Debtor(s):

Brad Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Joint Debtor(s):

Deborah Ann Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

6:13-15941 Adolfo Ayala

Chapter 13

#1.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 7422 Pheasant Run Rd Riverside CA 92509

MOVANT: BANK OF NEW YORK MELLON

EH__

Docket 56

***** VACATED *** REASON: CONTINUED TO 11/28/17 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adolfo Ayala

Represented By
Anthony Wilaras

Movant(s):

The Bank Of New York Mellon Fka

Represented By
Jonathan J Damen
Lisa Thomas
Anita F Robertson
Robert P Zahradka

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

6:15-13354 Jeffrey Michael Berger and Debra Lynn Berger

Chapter 13

#2.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 30820 Via Las Palmas, Thousand Palms CA 92276

MOVANT: DITECH FINANCIAL LLC

EH__

Docket 67

***** VACATED *** REASON: CONTINUED TO 11/7/17 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey Michael Berger

Represented By
Jenny L Doling

Joint Debtor(s):

Debra Lynn Berger

Represented By
Jenny L Doling

Movant(s):

DITECH FINANCIAL LLC

Represented By
Natalie E Lea
Jamie D Hanawalt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

6:15-20023 Zachary Lee Nowak

Chapter 13

#3.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 44984 Hawthorn Street, Temecula, California 92592

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 60

Tentative Ruling:

10/03/2017

Service is Proper
Opposition: Limited

Subject to discussion from the parties regarding adequate protection, the Court is inclined to GRANT the motion based on the post-confirmation defaults.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Zachary Lee Nowak

Represented By
John F Brady

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Alexander K Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

6:16-15678 Nicholas Asamo

Chapter 13

#4.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 7535 Peacock Ave., Highland, CA 92346

MOVANT: WELLS FARGO BANK NA

EH__

Docket 53

Tentative Ruling:

10/03/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3, and 12. DENY alternative request under ¶ 13 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Nicholas Asamo

Represented By
Stephen S Smyth
William J Smyth

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

6:17-10088 Beatriz Esqueda

Chapter 13

#5.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Chrysler 200 LX

MOVANT: CONSUMER PORTFOLIO SERVICES, INC.

From: 9/19/17

EH__

Docket 36

Tentative Ruling:

9/19/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Beatriz Esqueda

Represented By
Rebecca Tomilowitz

Movant(s):

Consumer Portfolio Services, Inc.

Represented By
Ryan M Davies

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

CONT... Beatriz Esqueda

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

6:17-12411 Maria I Alcaraz and Eduardo D Alcaraz

Chapter 13

#6.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2879 Butte Creek Place, Ontario CA

MOVANT: FEDERAL NATIONAL MORTGAGE/SETERUS

EH__

Docket 35

Tentative Ruling:

10/03/2017

Service is Proper
Opposition: Yes

Subject to cure by Debtor or discussion from the parties, the Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT relief from § 1301(a) stay. GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3, and 12. DENY ¶ 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Maria I Alcaraz

Represented By
Manfred Schroer

Joint Debtor(s):

Eduardo D Alcaraz

Represented By
Manfred Schroer

Movant(s):

Seterus, Inc. as the authorized

Represented By
Nichole Glowin

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

CONT... Maria I Alcaraz and Eduardo D Alcaraz

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

6:17-13649 Fernando Fabrigas, Sr. and Estela F. Fabrigas

Chapter 7

#7.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HONDA CIVIC, 2HGF C2F5 XGH5 72541

MOVANT: HONDA LEASE TRUST

EH__

Docket 36

Tentative Ruling:

10/03/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Fernando Fabrigas Sr.

Represented By
R Creig Greaves

Joint Debtor(s):

Estela F. Fabrigas

Represented By
R Creig Greaves

Movant(s):

HONDA LEASE TRUST

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

CONT... Fernando Fabrigas, Sr. and Estela F. Fabrigas
Vincent V Frounjian

Chapter 7

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Brandon J Iskander

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

6:17-15928 Maria A Holguin

Chapter 13

#8.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Re 44745 SAN LUIS REY LA, PALM DESERT, CA 92260

MOVANT: U.S. BANK NATIONAL ASSOCIATION

From: 9/5/17

EH__

Docket 10

Tentative Ruling:

10/03/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (4) based on multiple bankruptcy filings and unauthorized transfers. GRANT relief from § 1301(a) stay. GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 9, 11. DENY requests under ¶ 7 and 10 for lack of cause shown. DENY request under § 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Maria A Holguin

Pro Se

Movant(s):

U.S. Bank National Association, as

Represented By
Jason C Kolbe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

CONT... Maria A Holguin

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

6:17-16181 Dolores Duran

Chapter 7

#9.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 NISSAN ALTIMA, VIN # 1N4AL3AP3GC200135

MOVANT: NISSAN MOTOR ACCEPTANCE CORPORATION

EH__

Docket 13

Tentative Ruling:

10/03/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Dolores Duran

Represented By
Christopher J Lauria

Movant(s):

NISSAN MOTOR ACCEPTANCE

Represented By
Michael D Vanlochem

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

6:17-16824 Deborah Stevenson

Chapter 7

#10.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 11771 Genil Court, Mira Loma, CA 91752

MOVANT: US BANK NATIONAL ASSOCIATION

EH__

Docket 12

***** VACATED *** REASON: CASE DISMISSED 9/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Stevenson

Pro Se

Movant(s):

U.S. Bank National Association as

Represented By
Dane W Exnowski

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

6:17-17689 Eugene Charles Harris

Chapter 13

#11.00 Motion for relief from the automatic stay with supporting declarations
UNLAWFUL DETAINER RE: 25450 Clover Glen Circle Murrieta, CA 92563

MOVANT: STEPHEN A BRUNELLO AS TRUSTEE OF THE STEPHEN
BRUNELLO LIVING TRUST

EH__

Docket 8

***** VACATED *** REASON: CASE DISMISSED 9/29/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eugene Charles Harris

Pro Se

Movant(s):

Stephen A. Brunello as Trustee of

Represented By
Carol G Unruh

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

10:00 AM

6:16-21232 Alejandro Salinas, Jr.

Chapter 13

#11.10 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 6386 Stable Falls Avenue, Rancho Cucamonga, California 91739

MOVANT: PACIFIC COMMUNITY CREDIT UNION

From: 9/26/17

EH__

Docket 45

Tentative Ruling:

09/26/2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
GRANT ¶¶ 3 and 12. Request for APO DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Alejandro Salinas Jr.

Represented By
Nicholas M Wajda

Movant(s):

PACIFIC COMMUNITY CREDIT

Represented By
Nichole Glowin

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01225 Cambridge Medical Funding Group II, LLC v. Allied Injury Management,

#12.00 CONT Status Conference Re: Complaint by Cambridge Medical Funding Group II, LLC against Allied Injury Management, Inc., John C. Larson. 02 - Other e.g. other actions that would have been brought in state court if unrelated to bankruptcy

From: 11/1/16, 12/6/16, 1/31/17, 2/28/17, 3/28/17, 5/30/17, 8/29/17

EH__

Docket 1

*** VACATED *** REASON: CONTINUED TO 11/28/17 AT 2:00 P.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

John C. Larson

Pro Se

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Plaintiff(s):

Cambridge Medical Funding Group

Represented By
Kenneth Hennesay

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

2:00 PM

CONT... Allied Injury Management, Inc.

Steven Werth

Chapter 11

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

2:00 PM

6:17-15816 Integrated Wealth Management Inc

Chapter 7

#13.00 CONT Motion For Order Restricting Debtor's Use Of Corporate Funds

From: 8/23/17

Also #13.1 & #14

EH__

Docket 6

***** VACATED *** REASON: CONTINUED TO 10/31/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

Movant(s):

Mark Hayek

Represented By
Erwin J Shustak

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

2:00 PM

6:17-15816 Integrated Wealth Management Inc

Chapter 7

#13.10 CONT Motion for Relief from Stay

MOVANT: CHRIS RISENMAY; JAMES BRAY; NICK CUNNINGTON; DAVID THATCHER; CLARK PENNEY; SHATTUCK LAMM; STEPHEN BIESINGER; MARK THATCHER; BRANDT KUHN; MICHELE SARNA; MARK HAYEK, AND MIKE MCCONNELL

From: 9/26/17

Also #13 & #14

EH__

Docket 27

***** VACATED *** REASON: CONTINUED TO 10/31/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

Movant(s):

Mark Hayek

Represented By
Erwin J Shustak

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 03, 2017

Hearing Room 303

2:00 PM

6:17-15816 Integrated Wealth Management Inc

Chapter 7

#14.00 CONT Status Conference RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual

From: 8/16/17, 8/23/17

Also #13 & #13.1

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 10/31/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, October 04, 2017

Hearing Room 303

10:00 AM

6:17-14950 Ronald Lee Vigil and Toni Lee Vigil

Chapter 7

**#1.00 Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc
Re: 2015 Subaru Outback VIN: 4S4BSACC2F3331809**

EH__

Docket 18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald Lee Vigil

Represented By
James D. Hornbuckle

Joint Debtor(s):

Toni Lee Vigil

Represented By
James D. Hornbuckle

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, October 04, 2017

Hearing Room 303

10:00 AM

6:17-15704 Forrest Clayton Martz and Aubreeanna Ellen Martz

Chapter 7

**#2.00 Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation
Re: 2014 Toyota Sienna**

EH__

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Forrest Clayton Martz

Represented By
Aaron Lloyd

Joint Debtor(s):

Aubreeanna Ellen Martz

Represented By
Aaron Lloyd

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, October 04, 2017

Hearing Room 303

11:00 AM

6:16-13289 Jason A Sandstrom and Vanessa J Sandstrom

Chapter 7

#3.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 23

Tentative Ruling:

10/04/2017

No opposition has been filed.
Service was Proper.

The applications for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the following administrative claims will be allowed:

Trustee Fees: \$ 1,127.75
Trustee Expenses: \$ 63.74

The applications for compensation are approved and the trustee and associated professionals may submit on the tentative.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Jason A Sandstrom

Represented By
Julie J Villalobos

Joint Debtor(s):

Vanessa J Sandstrom

Represented By
Julie J Villalobos

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, October 04, 2017

Hearing Room 303

11:00 AM

CONT... Jason A Sandstrom and Vanessa J Sandstrom

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, October 04, 2017

Hearing Room 303

11:00 AM

6:16-17768 Dispatch Transportation LLC

Chapter 7

#4.00 Motion to Stay Amended Order Granting Relief from the Automatic Stay Pending Ruling on Motion for Reconsideration

Also #5

EH__

Docket 157

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/25/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dispatch Transportation LLC

Represented By
Leonard M Shulman
Elyza P Eshaghi

Movant(s):

Commodity Trucking Acquisition,

Represented By
Sharon Z. Weiss

Trustee(s):

Charles W Daff (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, October 04, 2017

Hearing Room 303

11:00 AM

6:16-17768 Dispatch Transportation LLC

Chapter 7

#5.00 Motion to Reconsider (related documents 133 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM (BNC-PDF)) - Motion for Reconsideration of the Order Granting Relief from the Automatic Stay

Also #4

EH__

Docket 150

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/25/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dispatch Transportation LLC

Represented By
Leonard M Shulman
Elyza P Eshaghi

Movant(s):

Commodity Trucking Acquisition,

Represented By
Sharon Z. Weiss

Trustee(s):

Charles W Daff (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, October 04, 2017

Hearing Room 303

11:00 AM

6:17-14228 Michelle Meredith

Chapter 7

#6.00 Chapter 7 Trustee's Motion for Order: (1) Requiring Turnover of Property of the Estate Pursuant to 11 U.S.C. § 542; and (2) Compelling the Debtor's Cooperation With the Trustee Pursuant to 11 U.S.C. § 521

EH__

Docket 56

Tentative Ruling:

10/04/2017

BACKGROUND

On May 19, 2017 ("Petition Date"), Michelle Meredith ("Debtor") filed her petition for chapter 7 relief. Howard Grobstein is the duly appointed chapter 7 trustee ("Trustee"). Among the assets of the bankruptcy estate is the Debtor's beneficial interest in distributions from the trusts of her grandparents, George J. Heath and Margaret J. Heath. The original trust established by her grandparents was the Heath Family Trust (the "Heath Trust"). In 2002, following the death of George Heath, Margaret created the Margaret J Heath Revocable Living Trust, 2002 (the "Margaret Trust") (collectively, the "Trusts"). Pursuant to the terms of the Margaret Trust, on the death of Margaret Heath the trustee of the Margaret Trust was directed to distribute all assets without restriction. In March 2017, prepetition, Margaret Heath passed away.

On September 13, 2017, the Trustee filed his Motion for Order: (1) Requiring Turnover of Property of the Estate Pursuant to 11 U.S.C. § 542; and (2) Compelling the Debtor's Cooperation with the Trustee Pursuant to 11 U.S.C. § 521 ("Motion"). The Motion was properly served on the Debtor and no opposition has been filed.

DISCUSSION

Under the Bankruptcy Code, a debtor has a duty to surrender property of the estate to the trustee. § 521(4). Furthermore, a trustee has the duty to "collect and reduce to money the property of the estate for which such trustee serves" § 704(1). Finally, "any entity, other than a custodian, in possession, custody or control of property that the trustee may use, sell, or lease under section 363 of this title ... shall deliver to the trustee, and account for, such property or the value of such property"

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CONT... Michelle Meredith
Id. § 542(a).

Chapter 7

The Trustee seeks an order directing the Debtor to turn over to him distributions received from the Trusts since the Petition Date, directing the Debtor to turn over any future distributions from the Trusts, and ordering the Debtor to turn over the following documents within five days of entry of the order: (1) a full copy of the trust documents and all amendments, (2) an accounting of distributions from the Trusts from the Petition Date to the present, and (3) copies of the Debtor's bank statements for the period of January 2017 through the present.

In support of the Motion, the Trustee asserts that he sought turnover of Trusts' distributions but the Debtor asserted that Trusts' distributions were not part of the bankruptcy estate because they were shielded by the Trusts' valid spendthrift provisions. (Ex. 7 and Ex. 9). To the extent a debtor holds a beneficial interest in a trust, that beneficial interest becomes property of the estate, unless it is protected by a valid spendthrift provision. 11 U.S.C. § 541(a)(1) and (c)(2). "Assets transferred to an irrevocable trust do not become part of a bankruptcy estate unless the transfer or the trust is invalid." *United States v. Lawrence*, 189 F.3d 838, 845 (9th Cir.1999). The Trustee asserts that the Heath Trust contained a spendthrift provision but that such provision did not apply to the Debtor and instead specifically indicates that it applies to the "principal beneficiary" of the Heath Trust – which are defined in Article 2 of the Heath Trust as "Class composed of the settlors for their joint lives" (i.e. Margaret and George Heath). Additionally, although the Trustee did not have a copy of the Margaret Trust at the time of the filing of the Motion, Debtor has since provided a copy of the Margaret Trust to the Trustee which was filed with this Court on September 28, 2017 and is Exhibit "1" of the Trustee's Supplemental Declaration. The Trustee notes that the Margaret Trust also appears to contain no spendthrift provision which would apply to Debtor and to the contrary appears to contemplate full distribution of the Margaret Trust principal on the death of Margaret Heath. The Court has reviewed the Trust documents and agrees with the Trustee's legal analysis. Based on these facts and arguments asserted by the Trustee, there appears to be no remaining legal issue which would prevent distributions from the Trusts from coming into the Debtor's bankruptcy estate. Additionally, the Debtor has failed to file opposition to the Trustee's Motion which this Court deems as consent to the granting of the relief requested pursuant to LBR 9013-1(h).

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TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the Motion as follows:

1. Directing the Debtor to turn over to the Trustee distributions received from the Trust since the Petition Date,
2. Directing the Debtor to turn over any future distributions from the Trust, and
3. Ordering the Debtor to turn over the documents requested by the Trustee to the extent not already produced (as set forth in the Trustee's supplemental declaration filed on September 28, 2017 as Docket No. 65.).

Parties to discuss deadline for turnover.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Michelle Meredith

Represented By
Patricia M Ashcraft

Movant(s):

Howard B Grobstein (TR)

Represented By
Noreen A Madoyan

Trustee(s):

Howard B Grobstein (TR)

Represented By
Noreen A Madoyan

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6:17-14684 Timothy Wayne Lambert and Lisa Renee Lambert

Chapter 7

#7.00 Motion to Extend Dismissal and Discharge Deadline pursuant to 11 USC sect 707-727 & Federal Rules of Bankruptcy Procedure 1017 & 4004

EH__

Docket 12

Tentative Ruling:

10/04/2017

BACKGROUND

On June 4, 2017 ("Petition Date"), Timothy and Lisa Lambert (collectively, the "Debtors") filed for chapter 7 relief.

On September 7, 2017, the Office of the United States Trustee ("UST") filed a Motion for Extension of Time to File a Complaint Objecting to Discharge ("Motion"). In support of the Motion, the UST asserts that the Debtors' schedules indicate that they did not earn income in 2017 and earned less than \$7,500 in 2016. The UST further asserts that the Debtors did not appear at the July 10 or August 10, 2017, meetings of creditors. The UST seeks an extension of time to file a complaint objecting to discharge while it investigates the Debtors' financial condition and specifically issues related to the Debtors' limited liability corporation, Rainbow Recovery, LLC.

Service of the Motion was proper and no opposition has been filed.

DISCUSSION

Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 4004 and 1017, Trustee seeks to extend the deadline for Trustee and U.S. Trustee to file a complaint objecting to Debtor's discharge under 11 U.S.C. § 727 and the deadline to seek dismissal under § 707, for an additional 60 days to November 7, 2017..

Under FRBP 4004(a) and 1017(e), on a motion of any party in interest, the court may for cause extend the time to object to discharge or to seek dismissal. Fed. R. Bankr. P. 4004, 1017.

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CONT... Timothy Wayne Lambert and Lisa Renee Lambert

Chapter 7

As a matter of practice what constitutes "cause" rests within the discretion of the bankruptcy court. *See In re James*, 187 B.R. 395, 397 (Bankr. N.D. Ga. 1995). Also, Courts are generally unified in the view that the term "for cause" should receive a liberal construction. *Id.* Notwithstanding that fact, however, a creditor must exhibit some minimum degree of due diligence prior to seeking such an extension, and the Court should not allow the motion to serve as license for a baseless "fishing expedition." *Id.*; *See also In re Leary*, 185 B.R. 405, 406 (Bankr. D. Mass. 1995). To establish cause movant must (1) show that he had, with reasonable diligence, attempted to investigate the facts and circumstances, and (2) offer a reasonable explanation of why that investigation could not be completed within the allotted time. *See Bomarito*, 448 B.R. at 251.

The Trustee has presented evidence that Debtors have not presented themselves for examination, and that issues regarding the Debtors' income in the years preceding the bankruptcy filing have yet to be fully investigated. Without such information, the UST and Trustee cannot determine whether the filing of either a motion to dismiss the case or a complaint to deny discharge are appropriate. For these reasons, the UST's request for extension constitutes sufficient "cause" for granting of the Motion.

TENTATIVE RULING

Accordingly, the Court is inclined to GRANT the relief requested and provide the UST an extension of 60 days for the filing of a complaint under § 727, and/or for the filing of a motion to dismiss under § 707.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Timothy Wayne Lambert

Represented By
Edgar P Lombera

Joint Debtor(s):

Lisa Renee Lambert

Represented By
Edgar P Lombera

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CONT... Timothy Wayne Lambert and Lisa Renee Lambert

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Movant(s):

United States Trustee (RS)

Represented By
Everett L Green

Trustee(s):

John P Pringle (TR)

Pro Se

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2:00 PM

6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#8.00 CONT Status Conference RE: Adversary case 6:13-ap-01171. Complaint by Charles Edward Schrader against Narinder Sangha . willful and malicious injury
HOLDING DATE

From: 7/8/15, 11/4/15, 3/2/16, 12/14/16, 12/13/17, 4/5/17, 6/7/17, 7/12/17, 8/2/17, 9/27/17

Also #9

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi
Ryan F Thomas

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#9.00 CONT Motion For Summary Judgment/Memorandum of Points and Authorities on the Preclusive Effect of Plaintiff's State Court Judgment
HOLDING DATE

From: 6/7/17, 7/12/17, 8/2/17, 9/27/17

Also #8

EH__

Docket 208

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi
Ryan F Thomas

Movant(s):

Charles Edward Schrader

Pro Se

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:14-01248 Revere Financial Corporation, a California corpora v. Roger, MD

#10.00 CONT Motion to Dismiss Adversary Proceeding Claims of Plaintiff, Jerry Wang, and to Strike and for a More Definite Statement as to Plaintiff, Revere Financial Corporation
(Holding date)

From: 11/5/14, 12/3/14, 12/15/14, 1/28/15, 4/15/15, 7/22/15, 9/23/15, 1/27/16
6/29/16, 9/28/16, 11/16/16, 2/1/17, 2/16/17, 5/3/17, 6/14/17, 6/28/17, 7/31/17

Also #11

EH__

Docket 10

***** VACATED *** REASON: CONTINUED TO 1/3/18 AT 2:00 P.M.**

Tentative Ruling:

07/31/2017

BACKGROUND

On October 25, 2013, Douglas Jay Roger ("Debtor") filed his petition for chapter 7 relief. On September 22, 2014, Revere Financial Corporation ("Revere") and Jerry Wang ("Receiver") filed a complaint for determination of the dischargeability of debts pursuant to §§ 523(a)(2)(B), 523(a)(2)(A), 523(a)(4)(A), 523(a)(4) & 523(a)(6); and objecting to the Debtor's discharge pursuant to §§727(a)(3), 727(a)(4)(A), 727(a)(4)(B), 727(a)(5), & 727(a)(7) ("Complaint").

On October 6, 2014, the Debtor filed a Motion to Dismiss, to Strike, and for a More Definite Statement ("Motion"). The operative pleadings are as follows:

1. Memorandum by Jerry Wang in Opposition to Motion (Docket No. 13);
2. Memorandum by Secured Creditor Revere in Opposition to Motion (Docket No. 14);
3. Reply of Debtor to Jerry Wang's Opposition (Docket No. 15);
4. Reply of Debtor to Revere & Jerry Wang's Opposition (Docket No. 16);
5. Debtor's Supplemental Brief (Docket No. 19); and
6. Chapter 7 Trustee's Opposition to Motion (Docket No. 34).

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CONT... Douglas Jay Roger

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DISCUSSION

Civil Rule 12(b)(6) standards

Under Civil Rule 12(b)(6), made applicable in adversary proceedings through Rule 7012, a bankruptcy court may dismiss a complaint if it fails to "state a claim upon which relief can be granted." In reviewing a Civil Rule 12(b)(6) motion, the trial court must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). However, the trial court need not accept as true conclusory allegations in a complaint or legal characterizations cast in the form of factual allegations. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555–56, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); *Hartman v. Gilead Scis., Inc. (In re Gilead Scis. Sec. Litig.)*, 536 F.3d 1049, 1055 (9th Cir. 2008).

To avoid dismissal under Civil Rule 12(b)(6), a plaintiff must aver in the complaint "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955). It is axiomatic that a claim cannot be plausible when it has no legal basis. A dismissal under Civil Rule 12(b)(6) may be based either on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. *Johnson v. Riverside Healthcare Sys.*, 534 F.3d 1116, 1121 (9th Cir.2008).

The Debtor asserts primarily that (1) the Receiver has no "authority" to bring the action; and (2) to the extent that Revere's claim for damages includes fees and expenses incurred by the Receiver in its claim for damages, such claim is not proper because neither the Debtor nor Revere is obligated for the Receiver's fees and expenses. To the extent the Debtor prevails on this second argument, the Debtor also requests that the claim of Revere for fees and expenses incurred by the Receiver be stricken, and that Revere be required to set forth a more definite statement of its damages.

I. The Receiver's "Authority" to Bring the Action Against the Debtor

A. The Receiver Needed Authority from the Appointing Court to bring an Action

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Once a court appoints a receiver, "[i]t is the rule that: 'The functions and powers of a receiver are controlled by statute, by the order appointing him, and by orders subsequently made by the court. He has no powers beyond those so conferred.' *Downtown Sunnyvale Residential LLC v. Wells Fargo Bank, N.A.*, No. H038572, 2015 WL 263727, at *9 (Cal. Ct. App. Jan. 20, 2015) (citing 42 Cal.Jur.2d, Receivers, § 73; and see authority there collected.)" (*Morand v. Superior Court* (1974) 38 Cal.App.3d 347, 351 (*Morand*).) "Where a receiver's powers and duties are not directly prescribed by statute, they are dependent upon the court's order of appointment." (*Nulaid Farmers Assn. v. LaTorre* (1967) 252 Cal.App.2d 788, 791.) A receiver's powers " 'may be expanded or contracted by subsequent court order.' " (*Resolution Trust Corp. v. Bayside Developers* (9th Cir.1994) 43 F.3d 1230, 1242 (*Resolution Trust Corp.*), citing to *Cal-American Income Property Fund VII v. Brown Development Corp.* (1982) 138 Cal.App.3d 268, 273 (*Cal-American*).)

The Debtor cites to Cal. C.C.P. § 568 (CCP 568) and to *Morand* regarding the powers of receivers for the proposition that the Receiver has no authority to bring the instant action. CCP 568 provides, in pertinent part, that

The receiver has, under the control of the Court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the Court may authorize.

The Debtor argues that because the order appointing the Receiver did not enumerate the authority to file lawsuits as a power authorized by the Court, that the Receiver is without such authority until such time as he receives authorization from the Superior Court to file this action. Although authorities are scant, the authorities cited by the Debtor and found by this Court support the conclusion that for the Receiver to institute an action, the order appointing the Receiver must at a minimum contain language generally, if not specifically, authorizing/directing the commencement of actions. *See e.g. Harting v. Cebrian*, 10 Cal. App. 2d 10, 51 P.2d 195 (1935).

The Receiver, for his part, argues that he was directed to manage the receivership estate, including to "take possession, custody, and control" of various

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assets that comprise the "Receivership Estate" and to "[c]ollect all proceeds of the Receivership Estate, whether equity, income, payments, rents, revenue, sale, or otherwise." (Receiver Opp'n at 2). This language, however, is insufficient for the purpose of authorizing the Receiver to initiate legal actions. *See e.g. Harting v. Cebrian*, 10 Cal. App. 2d 10, 51 P.2d 195 (1935). In support of its position, the Receiver cites *Title Ins. & Tr. Co. v. Grider*, 152 Cal. 746, 94 P. 601 (1908). However, *Grider* dealt with two issues not present in the instant action – first, an attack on the underlying basis for the appointment of a receiver, and second, an assertion that the property at issue was not property that the Receiver was authorized to collect. Neither issue resolves the issue of whether the language of a receivership order authorizes the initiation of an action.

Based on the foregoing, the Court finds that the failure of the Receiver to allege that the receivership order provided him with the authority to initiate actions on behalf of the Receivership Estate is grounds for dismissal.

Although moot, assuming the Receiver did have authority to file the Complaint, as to the Receiver's claim for damages the Receiver has clarified that it does not seek its own fees, expenses, and costs. Instead, it seeks recovery of receivership assets. To the extent the Receiver's claim for damages is limited to recovery of assets of the receivership estate, such damages appear to fall squarely within the bounds of the Order Appointing Receiver. As such, the Receiver would need to amend the Complaint to clarify that its request for damages is limited to recovering assets of the receivership estate.

II. Revere is Not Liable to the Receiver for Fees and Costs and Thus Cannot Seek to Recover Such Fees and Costs as Damages

The Debtor argues that Revere has no basis to include fees and expenses of the Receiver. In response, Revere has cited to authorities indicating that in the event that the receivership estate is insufficient to pay the Receiver's fees and expenses, courts have, in some cases, found third parties liable to the receivers for the deficiency. The Debtor asserts that *Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 374, 28 S. Ct. 406, 410, 52 L. Ed. 528 (1908), is dispositive of this issue.

The Supreme Court, in *Atlantic Trust*, acknowledged that third parties may be

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held liable in certain circumstances but indicated that such cases were rare. The Supreme Court stated, in pertinent part:

It is true that cases are cited in which the party bringing a suit in which a receiver is appointed has been held liable for expenses incurred by the receiver in excess of the proceeds arising from the sale of the property. But in most, if not in all, of those cases, the circumstances were peculiar and were such as to make it right and equitable, in the opinion of the court, that that should be done.

Id. As the Debtor acknowledges, the Supreme Court did not hold that a third party could under no circumstances be liable for a receiver's fees and expenses. Instead, the Debtor asserts only that the specific cases cited by Revere in which a third party was held liable are not applicable to the facts alleged in the instant case. Here, the Debtor does not address the broad language of the Commercial Security Agreement (Complaint at Ex. 3 at 42) in which Revere has pointed to provisions of Debtor's loan documentation, which may provide Revere with a basis to recover for fees and expenses owed to the Receiver for his services. However, notwithstanding this point, the Complaint does not include allegations that the receivership estate will not have funds to fully compensate the Receiver such that Revere could claim any liability for his costs and fees. Nor does the Complaint set forth a claim based on the contractual language cited by Revere in its opposition. As such, the Court finds that the Complaint does not contain sufficient factual allegations to support a plausible claim for damages based on the Receiver's fees and costs.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the Motion as to dismissal of the Receiver, and as to striking Revere's claim for damages to the extent it includes fees and costs owed to the Receiver.

The Motion is DENIED as to its request for dismissal without leave to amend. There has been no showing by Debtor to justify dismissal with prejudice. The Receiver and Revere shall have 60 days from the date of entry of the order on the Motion to amend the Complaint.

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Chapter 7

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Douglas J Roger MD

Represented By
Summer M Shaw

Movant(s):

Douglas J Roger MD

Represented By
Summer M Shaw

Plaintiff(s):

A. Cisneros

Represented By
Chad V Haes
D Edward Hays

Jerry Wang

Represented By
Franklin R Fraley Jr
Anthony J Napolitano

Revere Financial Corporation, a

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:14-01248 Revere Financial Corporation, a California corpora v. Roger, MD

#11.00 CONT Status Conference RE: Complaint by Revere Financial Corporation, a California corporation, Jerry Wang against Douglas J Roger MD. false pretenses, false representation, actual fraud, 68 Dischargeability - 523(a)(6), willful and malicious injury, 67 Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 41 Objection / revocation of discharge - 727(c),(d),(e) **(Holding date)**

From: 11/26/14, 1/26/15, 1/28/15, 4/15/15, 7/22/15, 9/23/15, 1/27/16, 6/29/16, 9/28/16, 11/16/16, 2/1/17, 2/16/17, 5/3/17, 6/14/17, 6/28/17, 7/31/17

Also #10

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 1/3/18 AT 2:00 P.M.**

Tentative Ruling:

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Douglas J Roger MD

Represented By
Summer M Shaw

Plaintiff(s):

A. Cisneros

Represented By
Chad V Haes
D Edward Hays

Jerry Wang

Represented By
Franklin R Fraley Jr

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Revere Financial Corporation, a

Anthony J Napolitano

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar
Carmela Pagay
Franklin R Fraley Jr

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6:17-13649 Fernando Fabrigas, Sr.

Chapter 7

Adv#: 6:17-01156 Daff v. Fabrigas, Jr.

#12.00 Status Conference RE: [1] Adversary case 6:17-ap-01156. Complaint by Charles W. Daff against Fernando Fabrigas, Jr.. (Charge To Estate \$350.00). for: 1) AVOIDANCE OF INTENTIONAL FRAUDULENT TRANSFERS AND RECOVERY OF SAME [11 U.S.C. §§ 544, 548, 550, 551; CAL. CIV. CODE §§ 3439.04, 3439.07, 3439.08]; 2) AVOIDANCE OF CONSTRUCTIVE FRAUDULENT TRANSFERS AND RECOVERY OF SAME [11 U.S.C. §§ 544, 548, 550, 551; CAL. CIV. CODE §§ 3439.04, 3439.05, 3439.07, 3439.08, 3439.09]; 3) DISALLOWANCE OF CLAIMS [11 U.S.C. §502(d)]; 4) UNJUST ENRICHMENT [11 U.S.C. § 105]; 5) DECLARATORY RELIEF [11 U.S.C. §§ 541, 544; FRBP 7001(9)]; AND 6) TURNOVER OF PROPERTY OF THE ESTATE [11 U.S.C. § 542] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)) (Iskander, Brandon)

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 11/8/17 AT 2:00 P.M.
ALIAS ISSUED**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fernando Fabrigas Sr.

Represented By
R Creig Greaves

Defendant(s):

Fernando Fabrigas, Jr.

Pro Se

Joint Debtor(s):

Estela F. Fabrigas

Represented By
R Creig Greaves

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CONT... Fernando Fabrigas, Sr.

Chapter 7

Plaintiff(s):

Charles W. Daff

Represented By
Brandon J Iskander

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Brandon J Iskander

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11:30 AM

6:17-17137 Ricks Patio, Inc

Chapter 11

#1.00 Emergency motion for Approval of Stipulations Regarding Debtor's Use of Cash Collateral

EH__

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricks Patio, Inc

Represented By
Robert B Rosenstein

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Hearing Room 303

12:30 PM

6:16-16263 Tanyua A Gates-Holmes

Chapter 13

#1.10 Motion RE: Objection to Claim Number 1 by Claimant Wescom Central Credit Union

Also #2

EH__

Docket 48

Tentative Ruling:

10/05/2017

Background:

On July 14, 2016, Tanyua Gates-Holmes ("Debtor") filed a Chapter 13 voluntary petition. On September 1, 2016, Debtor's Chapter 13 plan was confirmed.

On July 15, 2016, Wescom Credit Union ("Creditor") filed a proof of claim for an unsecured claim in the amount of \$1,122.30 ("Claim 1"). On August 30, 2016, Debtor filed an objection to Claim 1.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223

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CONT... **Tanyua A Gates-Holmes**

Chapter 13

F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

On September 6, 2017, Creditor filed a withdrawal of Claim 1. Therefore, Debtor's claim objection is DENIED as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

**United States Bankruptcy Court
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CONT... Tanyua A Gates-Holmes

Chapter 13

Tanyua A Gates-Holmes

Represented By
John F Brady

Movant(s):

Tanyua A Gates-Holmes

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Hearing Room 303

12:30 PM

6:16-16263 Tanyua A Gates-Holmes

Chapter 13

#2.00 Motion RE: Objection to Claim Number 7 by Claimant Palisades Collecitons, LLC aka Palisades Collection, LLC

Also #1

EH__

Docket 49

Tentative Ruling:

10/05/2017

Background:

On July 14, 2016, Tanyua Gates-Holmes ("Debtor") filed a Chapter 13 voluntary petition. On September 1, 2016, Debtor's Chapter 13 plan was confirmed.

On September 21, 2016, Palisades Collections, LLC ("Creditor") filed a proof of claim for an unsecured claim in the amount of \$10,606.07 ("Claim 7"). On August 30, 2016, Debtor filed an objection to Claim 7.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223

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CONT... **Tanyua A Gates-Holmes**

Chapter 13

F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Debtor argues that the statute of limitations is four years for Creditor's claim and that Creditor's claim is therefore barred. Cal. Code Civ. P. § 337(2) provides for a statute of limitations of four years for:

An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgement of the account stated need not be in writing; (3) a

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CONT...

Tanyua A Gates-Holmes

Chapter 13

balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

Cal. Code Civ. P. § 337(1) provides that the statute of limitations is also four years for claims based upon a contract.

The Court has reviewed Creditor's proof of claim and it appears that the applicable statute of limitations is four years pursuant to Cal. Code Civ. P. § 337. It additionally appears that Debtor had not made a payment on the claim in more than eight years at the time of the petition, and, therefore, the statute of limitations has expired.

Furthermore, the Court deems failure to oppose to be consent to the relief requested pursuant to Local Rule 9013-(1)(h).

Tentative Ruling

The Court is inclined to SUSTAIN the objection.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

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CONT... Tanyua A Gates-Holmes

Chapter 13

Debtor(s):

Tanyua A Gates-Holmes

Represented By
John F Brady

Movant(s):

Tanyua A Gates-Holmes

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-14501 Julie Lynn Salazar

Chapter 13

#3.00 CONT Confirmation of Chapter 13 Plan

From: 7/6/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julie Lynn Salazar

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15227 John E Neilsen, Sr and Kathy A Neilsen

Chapter 13

#4.00 CONT Motion to Avoid Junior Lien with Dreambuilder Investments LLC Serviced By Trojan Capital Investments LLC

From: 9/21/17

Also #5

EH__

Docket 24

Tentative Ruling:

9/21/17

TENTATIVE

The Court having reviewed the motion, finding notice and service to be proper and reviewed the opposition, the Court is inclined to DENY the motion without prejudice. Specifically, as is noted in the opposition, Debtors have not submitted evidence which clearly establishes the amount owing on the senior security interest. Debtors have submitted a payoff quote, dated July 20, 2017, which states that the total amount due is \$347,890.95. Debtors have additionally submitted a letter, dated May 17, 2017, which states that the remaining deferred principal amount is \$129,872.54. Debtors' motion adds the two above amounts together, and asserts that the sum is the total amount due.

Nevertheless, the relationship between the two documents submitted by Debtors is unclear. The payoff quote submitted is dated approximately two months later than the letter, and, therefore, the letter cannot refer to the payoff quote. Because of this lack of clarity, Debtors have not established the amount owing on the senior security interest.

APPEARANCES REQUIRED.

Party Information

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CONT... John E Neilsen, Sr and Kathy A Neilsen

Chapter 13

Debtor(s):

John E Neilsen Sr

Represented By
Julie J Villalobos

Joint Debtor(s):

Kathy A Neilsen

Represented By
Julie J Villalobos

Movant(s):

Kathy A Neilsen

Represented By
Julie J Villalobos

John E Neilsen Sr

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, October 05, 2017

Hearing Room 303

12:30 PM

6:17-15227 John E Neilsen, Sr and Kathy A Neilsen

Chapter 13

#5.00 CONT Confirmation of Chapter 13 Plan

From: 7/27/17, 8/17/17, 9/21/17

Also #4

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John E Neilsen Sr

Represented By
Julie J Villalobos

Joint Debtor(s):

Kathy A Neilsen

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-15586 Jeannine Michon Norman

Chapter 13

#6.00 CONT Confirmation of Chapter 13 Plan

From: 8/17/17, 8/31/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeannine Michon Norman

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-16480 Adriana Brodie

Chapter 13

#7.00 CONT Emergency Motion to Vacate Dismissal and Requiring Debtor to Serve Notice of the Motion on all Creditors

From: 9/14/17

EH__

Docket 23

Tentative Ruling:

09/14/2017

BACKGROUND

On August 3, 2017 ("Petition Date"), Adriana Brodie ("Debtor") filed her petition for chapter 13 relief. Rod Danielson is the duly appointed chapter 13 trustee ("Trustee").

On August 8, 2017, the case was dismissed for failure by the Debtor to file initial schedules by the Court imposed deadline. Specifically, the Court had issued a notice on August 4, 2017, that the case would be dismissed if the Debtor did not provide a statement of social security number, electronic filing declaration, and master mailing matrix list of creditors within 72 hours. The Court clarified in a Notice to Filer that although the Statement of Social Security and Declaration of Electronic Filing had been filed, that they had not been signed. The Debtor did not correct the deficiencies and the case was dismissed.

The Debtor attempted to cure the deficiencies and filed an "Emergency Motion to Vacate Dismissal" on August 8, 2017 (the same date as the dismissal). On August 11, 2017, the Court denied the Debtor's Emergency Motion because the Debtor only cured two of the deficiencies for which the case was dismissed – having filed an amended Statement of Social Security and Electronic Filing Declaration but no creditor mailing matrix.

On August 14, 2017, the Debtor filed a second Emergency Motion to Vacate Dismissal (the "Motion"). The Trustee filed comments on August 15, 2017,

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CONT... Adriana Brodie

Chapter 13

recommending disapproval and indicated that Counsel for the Debtor has failed to provide an explanation which would warrant vacating the dismissal.

TENTATIVE RULING

The Court has confirmed with the Clerk's office that the three deficiencies which resulted in the dismissal have now been cured. However, the Debtor's case was filed as skeletal on the Petition Date and since the dismissal of the case the balance of schedules has come due.

The Court is inclined to GRANT the Motion conditioned on the Debtor filing all remaining schedules which have come due since the case was dismissed.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Adriana Brodie

Represented By
Aalok Sikand

Movant(s):

Adriana Brodie

Represented By
Aalok Sikand

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-17182 Francis Adam Waldschmitt

Chapter 7

#8.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE CONVERTED TO CHAPTER 7 ON
9/9/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francis Adam Waldschmitt

Represented By
Suzette Douglas

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-17183 Jose E. Toledo and Antonia Toledo

Chapter 13

#9.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose E. Toledo

Represented By
Moises A Aviles

Joint Debtor(s):

Antonia Toledo

Represented By
Moises A Aviles

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:30 PM

6:17-17209 Violeta Perola

Chapter 13

#10.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Violeta Perola

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:17-17230 Catherine Lucille Laff

Chapter 13

#11.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Catherine Lucille Laff

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-17241 Corinthia A. Williams

Chapter 13

#12.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Corinthia A. Williams

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, October 05, 2017

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12:30 PM

6:17-17293 Sara Ann Garcia

Chapter 13

#13.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sara Ann Garcia

Represented By
Lionel E Giron

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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12:30 PM

6:17-17316 Luis Fernando Montoya, Jr.

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luis Fernando Montoya Jr.

Represented By
Anthony B Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-17321 Fernando Farias

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 9/18/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fernando Farias

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-17358 David Kevin Davidson and Lisa Marie Davidson

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Kevin Davidson

Represented By
Michael E Clark

Joint Debtor(s):

Lisa Marie Davidson

Represented By
Michael E Clark

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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12:30 PM

6:17-17402 Thomas Lee Abercrombie and Rebecca Anne Abercrombie

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Lee Abercrombie

Represented By
Rabin J Pournazarian

Joint Debtor(s):

Rebecca Anne Abercrombie

Represented By
Rabin J Pournazarian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-17418 Deborah Thomas

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Thomas

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

12:30 PM

6:16-19962 Fonda Cormier

Chapter 7

#18.10 CONT Motion to vacate order or Reconvert to original Chapter 13

From: 9/28/17

EH__

Docket 61

Tentative Ruling:

09/28/2017

BACKGROUND

On November 9, 2016, Fonda Cormier ("Debtor") filed her petition for chapter 13 relief. Rod Danielson was the duly appointed chapter 13 trustee ("Trustee"). The Debtor's chapter 13 plan was confirmed on December 28, 2016. On June 30, 2017, the Debtor filed a notice to conversion and the Court converted the case on the same date pursuant to § 1307(a) ("Conversion Order"). At approximately 4:23 p.m. of the same day, the Debtor sought to vacate the Conversion Order.

The Court set a hearing on the Debtor's motion to vacate the Conversion Order and issued a tentative ruling prior to the hearing indicating as follows:

As a preliminary matter, the proof of service included in Debtor's motion is not signed, and Debtor has not served all parties in interest pursuant to Local Rule 1017.

Additionally, Debtor's motion contains no legal standard or analysis. Relief from a judgment or order is governed by Fed. R. Civ. P. Rule 60, incorporated into bankruptcy proceedings by Fed. R. Bankr. P. Rule 9024. Debtor has not provided any argument relating to that standard.

Furthermore, the declaration of Debtor's attorney appears to misrepresent the factual situation. First, the reasons for Debtor converting to Chapter 7 are not given. The primary argument presented

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CONT...

Fonda Cormier

Chapter 7

by Debtor in support of this motion is that counsel learned, after filing a notice of conversion and having further discussions with Trinity Financial, that Trinity Financial would likely file a motion for relief from stay if the case was converted to Chapter 7. Trinity Financial had, however, in fact filed a motion for relief from stay on May 9, 2017, and an order approving the stipulation of the parties was entered on June 27, 2017. Section 10 of that order states: "This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code." The parties chose not to include language that would provide for relief from stay upon conversion of the case. Therefore, it is unclear how the conversion of the case could have any effect on the automatic stay as it relates to Trinity Financial.

As an aside, the Court notes that Debtor is ineligible for a Chapter 7 discharge under § 727(a)(8) by virtue of a Chapter 7 discharge on September 25, 2009.

Tentative Ruling, August 31, 2017.

On June 6, 2017, the Debtor filed a new Motion to Vacate Order or to Reconvert to Original Chapter 13 ("Motion"). The Motion was filed by the Debtor's new counsel. The Motion indicates that the conversion was a mistake of prior counsel and that it was one which could have severe consequences for the Debtor.

DISCUSSION

The Court is cognizant, here, that the Debtor's chapter 13 plan was already confirmed and the mistake was clearly negligent on the part of her prior counsel. However, the Court further notes that a motion to dismiss filed by the Trustee was pending at the time of conversion for a delinquency of \$1,147.50.

TENTATIVE RULING

The Court is inclined to GRANT the request to vacate the conversion order conditioned upon the Debtor's ability to bring her plan current.

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CONT... Fonda Cormier

Chapter 7

Separately, based on the Debtor's assertion that she paid her prior counsel \$1,000 for the motion to convert her case to a chapter 7, the Court is inclined to issue on OSC re: disgorgement as to Phillip Myer.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Fonda Cormier

Represented By
Manfred Schroer

Movant(s):

Fonda Cormier

Represented By
Manfred Schroer

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
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12:31 PM

6:13-21894 Francisco Javier Medina and Maria Guadalupe Medina

Chapter 13

#19.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 8/31/17

EH__

Docket 134

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco Javier Medina

Represented By
Tamar Terzian

Joint Debtor(s):

Maria Guadalupe Medina

Represented By
Tamar Terzian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:14-14265 Ricardo Pimentel and Maria Pimentel

Chapter 13

#20.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 8/31/17, 9/14/17

EH__

Docket 50

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricardo Pimentel

Represented By
Tamar Terzian

Joint Debtor(s):

Maria Pimentel

Represented By
Tamar Terzian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, October 05, 2017

Hearing Room 303

12:31 PM

6:14-19913 Martin Caballero and Clementina Caballero

Chapter 13

#21.00 Trustee's Motion to Dismiss Case

EH__

Docket 109

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martin Caballero

Represented By
Luis G Torres

Joint Debtor(s):

Clementina Caballero

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, October 05, 2017

Hearing Room 303

12:31 PM

6:15-15868 Jackqueline D Mitchell

Chapter 13

#22.00 Trustee's Motion to Dismiss Case

EH__

Docket 36

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jackqueline D Mitchell

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Courtroom 303 Calendar**

Thursday, October 05, 2017

Hearing Room 303

12:31 PM

6:15-15904 Lucianna P Wais

Chapter 13

#23.00 Trustee's Motion to Dismiss Case

EH__

Docket 71

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lucianna P Wais

Represented By
Steven A Alpert

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, October 05, 2017

Hearing Room 303

12:31 PM

6:16-17724 Carlos Gutierrez and Josefina Gutierrez

Chapter 13

#24.00 Trustee's Motion to Dismiss Case

EH__

Docket 40

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carlos Gutierrez

Represented By
Patricia A Mireles

Joint Debtor(s):

Josefina Gutierrez

Represented By
Patricia A Mireles

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-18125 Marc Meisenheimer

Chapter 13

#25.00 Trustee's Motion to Dismiss Case

EH__

Docket 52

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/2/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marc Meisenheimer

Represented By
Lionel E Giron
Kevin Tang

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 05, 2017

Hearing Room 303

12:31 PM

6:16-20044 Charles Mickey Alligood

Chapter 13

#26.00 Trustee's Motion to Dismiss Case

EH__

Docket 40

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Mickey Alligood

Represented By
Neil R Hedtke

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 05, 2017

Hearing Room 303

12:31 PM

6:16-20329 Gabriel Cruz

Chapter 13

#27.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 8/31/17

EH__

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gabriel Cruz

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 05, 2017

Hearing Room 303

12:31 PM

6:16-20553 Diana Cescolini

Chapter 13

#28.00 Trustee's Motion to Dismiss Case (Material Default)

EH__

Docket 50

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Diana Cescolini

Represented By
John F Brady

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 05, 2017

Hearing Room 303

12:31 PM

6:17-13006 Brenda Joelle Rue

Chapter 13

#29.00 Trustee's Motion to Dismiss Case

EH__

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brenda Joelle Rue

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 05, 2017

Hearing Room 303

12:31 PM

6:17-14798 Gail Katherine Stump

Chapter 13

#30.00 Trustee's Motion to Dismiss Case

EH__

Docket 25

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gail Katherine Stump

Represented By
Michael E Clark

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, October 16, 2017

Hearing Room 303

9:30 AM

6:14-13046 Allen Dale Sanderson

Chapter 7

Adv#: 6:14-01116 Verbree v. Sanderson

#1.00 Trial RE: [1] Adversary case 6:14-ap-01116. Complaint by Margaret Verbree against Allen Dale Sanderson. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Madoni, Stephen)

EH__

Docket 1

Party Information

Debtor(s):

Allen Dale Sanderson

Represented By
Robert K McKernan

Defendant(s):

Allen Dale Sanderson

Represented By
Robert K McKernan

Plaintiff(s):

Margaret Verbree

Represented By
Stephen A Madoni

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Courtroom 303 Calendar**

Tuesday, October 17, 2017

Hearing Room 303

10:00 AM

6:14-13046 Allen Dale Sanderson

Chapter 7

Adv#: 6:14-01116 Verbree v. Sanderson

#1.00 CONT Trial RE: [1] Adversary case 6:14-ap-01116. Complaint by Margaret Verbree against Allen Dale Sanderson. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Madoni, Stephen)

From: 10/16/17

EH__

Docket 1

Party Information

Debtor(s):

Allen Dale Sanderson

Represented By
Robert K McKernan

Defendant(s):

Allen Dale Sanderson

Represented By
Robert K McKernan

Plaintiff(s):

Margaret Verbree

Represented By
Stephen A Madoni

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, October 18, 2017

Hearing Room 303

9:30 AM

6:17-11053 Rio Rancho Super Mall LLC

Chapter 11

#1.00 Evidentiary Hearing re Motion for Valuation of Security Interest in Real Property

Also #2 & #3

EH__

Docket 80

***** VACATED *** REASON: CONTINUED TO 12/4/17 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

Movant(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

**United States Bankruptcy Court
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Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, October 18, 2017

Hearing Room 303

9:30 AM

6:17-11053 Rio Rancho Super Mall LLC

Chapter 11

#2.00 CONT Disclosure Statement hearing
HOLDING DATE

From: 7/25/17, 8/22/17

Also #1 & #3

EH__

Docket 88

*** VACATED *** REASON: CONTINUED TO 12/4/17 AT 10:00 A.M.

Tentative Ruling:

08/22/2017

I. BACKGROUND

Rio Rancho Super Mall, LLC ("Debtor") is a California Limited Liability Corporation. Debtor owns and operates a commercial property, Rio Rancho Super Mall, located at 25211 Sunnymead Blvd., Moreno Valley, CA 92553 ("Property"). The Property is improved with a commercial building (approx. 100,750 sq. ft.) with retail space for 87 retail tenants. On February 13, 2017, Debtor filed a voluntary Chapter 11 Petition. This is the Debtor's second chapter 11 case. The Debtor's prior case was dismissed on December 27, 2016, based on the Debtor's material default in its compliance with the terms of the previously confirmed chapter 11 plan.

Related Documents:

- On August 2, 2017, Debtor filed its First Amended Disclosure Statement (Redlined) (Docket #88) and its First Amended Chapter 11 Plan of Reorganization (Redlined) (Docket #89).
- On August 8, 2017, creditor Butterfield Valley Parnters filed its Opposition/Objection to the First Amended Disclosure Statement and First Amended Plan (Docket #93).
- On August 9, 2017, creditor Pacific City Bank filed its Limited Joinder to the Objection of Butterfield

Ownership and Management of Debtor:

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9:30 AM

CONT...

Rio Rancho Super Mall LLC

Chapter 11

Debtor has two owners

1. Eric Sang Yul Kim ("Mr. Kim") is the managing member and owns 87.5%
2. Kwan Sung Kim ("Mrs. Kim"), Debtor's wife, owns the remaining 12.5%

The Debtor is managed by Dennis Park and Kwang Sung Kim. Mrs. Hyang Hwa Kim is the sister of Eric Sang Yul Kim and is providing uncompensated services to the Debtor. The Debtor proposes to begin paying Mrs. Hyang Kim a regular salary of \$3,000 per month "if the market is stable".

DSD:

Debtor's primary secured creditor is DSD Note Investors, Inc. ("DSD") which the Debtor asserts fully encumbers the Property. On January 31, 2017, DSD filed a complaint for breach of contract and foreclosure and also moved the Superior Court for the appointment of a receiver.

Motivation for filing a Chapter 11:

Debtor contends that the instant filing was precipitated by the dismissal of its prior case due, in part, to poor market conditions which did not sufficiently improve, and due also to problems with the Debtor's confirmed plan which failed to account for certain liens; and also due to the aggressive collection efforts of DSD.

II. DISCUSSION

Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

"Adequate information" means information of a kind, and in sufficient detail, so 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 the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

There is no set list of required elements to provide adequate information per

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CONT... **Rio Rancho Super Mall LLC**

Chapter 11

se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bankr. N.D.Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *In re Michelson*, 141 B.R. 715, 718-19 (Bankr. E.D.Cal. 1992).

Courts have developed lists of relevant factors for the determination of adequate disclosure. *See, e.g., In re A.C. Williams Co.*, 25 B.R. 173, 176 (Bankr. N.D. Ohio 1982), *In re Ferretti*, 128 B.R. 16, 18-19 (Bankr. D.N.H. 1991), *In re Malek*, 10 C.B.C.2d 189, 35 B.R. 443, 443-44 (Bankr. E.D. Mich. 1983), *In re Metrocraft*, 39 B.R. 567, 568 (Bankr. N.D.Ga. 1984), *In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988), *In re U.S. Brass Corp.*, 194 B.R. 420, 424-25 (Bankr. E.D. Tex. 1996).

This Court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D.Pa. 1982).

PLAN SUMMARY

The Debtor proposes an Effective Date of November 1, 2017

Funding

Debtor intends to fund the plan with regular business income estimated by the Debtor at approximately \$110,920 per month. As of August 1, 2017, Debtor anticipates generating monthly gross rental income of \$123,197 from an increase in rent.

Debtor asserts it will have \$45,000 on the Effective Date from rental income and capital contributions

Administrative Claims: (Unimpaired)

Paid in full on Effective Date

· Law Offices of Langley & Chang:	\$25,000
· Clerk's Office:	\$0
· <u>US Trustee Fees:</u>	<u>\$975</u>
Total:	\$25,975

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CONT... **Rio Rancho Super Mall LLC**

Chapter 11

Priority Tax Claims: (Unimpaired)

Paid in full on Effective Date

· CA Franchise Tax Board:	\$800
· <u>IRS</u>	<u>\$2,711.88</u>
Total:	\$3,511.88

Class 1: DSD Note Investors, LLC (Impaired)

- Principal balance/allowed claim: \$12,000,000
- Secured claim allowed per stipulation including agreement by DSD to extend loan maturity date (notwithstanding Debtor assertion that Property value is \$7,000,000).
- Terms: \$55,000 per month at 5.75% interest for 48 months
 - Additional quarterly payments of \$7,500 per quarter for 48 months, thereafter loan is due in full.

Class 2: Riverside County Tax (Impaired)

- Principal balance/allowed claim: \$295,813
- Terms: \$5,330.11 per month at 18% interest for 120 months

Class 3: General Unsecured Creditors (Impaired)

- Debtor proposes to pay 0% (i.e. no payments to general unsecured creditors).

Class 4: Equity Interest Holders

- Mr. Kim and Mrs. Kim will retain their interests

New Value

At confirmation, the equity holders will make a one-time capital contribution of \$35,000

Liquidation Value

Debtor estimates its liquidation value is \$7,028,400 and thus after payment of the secured claim of DSD in the amount of \$12,000,000 and even assuming funds are available to pay administrative claims and priority tax claims, no funds would remain for other creditors.

Feasibility

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9:30 AM

CONT... **Rio Rancho Super Mall LLC**

Chapter 11

1. EFFECTIVE DATE

Debtor will fund the plan through regular business income and the cash contribution. Debtor states it will have \$45,000 on effective date to pay \$29,486.88 due on Effective Date.

· Cash on hand:	\$10,000 (DIP Account)
· <u>Capital Contributions:</u>	<u>\$35,000</u>
Total:	\$45,000

Balance remaining after paying initial amount of Effective Date: \$15,513.12

2. FEASIBILITY THROUGHOUT LIFE OF PLAN

The Debtor asserts it will have \$123,197 in gross monthly income from rents. It estimates expenses plus plan payments will cost Debtor \$123,152.11 per month. At this level, the Debtor is expected to have an approximate shortfall of \$44.89 per month.

III. OBJECTIONS

All objections were timely filed. The Debtor has filed no replies.

Butterfield Objections

1. Butterfield disputes that DSD can assert any claim greater than \$10,422,000 per the limitations contained in the DSD Deed of Trust;
2. Butterfield seeks additional language to make clear that the Plan will not place limits on the "ongoing effectiveness of the CAM Agreement"
3. Objects to being classified as a "unsecured" claimant where the motion to value has not yet been resolved and objects because the Plan makes no reference to the claim of Butterfield asserted in its proof of claim - \$741,664.74 (the Redline DS, Exhibit F fails to indicate the amounts of filed claims although several have been filed since the drafting of the original DS)
4. Butterfield also appears to object to any DS which does not provide for the contingency that at least some junior lienholders, including itself, may be fully or partially secured depending on the outcome of the motion to value.

Pacific City Bank Objections

1. PCB joins Butterfield's objection that the maximum value that DSD can assert as a first priority lienholder is \$10,422,000

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CONT... Rio Rancho Super Mall LLC

Chapter 11

Tentative Ruling:

08/22/2017

Debtor's Disclosure Statement and Plan are defective for the following reasons:

1. The Debtor refers to Mrs. Kwang Sung Kim as "Kwan Sun Kim" in the introductory paragraph to the DS. One of these spellings contains typos;
2. Based on the terms indicated by the Debtor for payment of DSD's claim, it appears that the Debtor anticipates making a balloon payment to DSD at the end of the plan. The Plan should clearly indicate the Debtor's estimate of how large this payment will be and the source of funding to pay the balloon payment;
3. On page 20, under the section entitled "C. Feasibility", the DS did not indicate that priority tax claims will also be paid on the Effective Date, which would alter the Debtor's calculation of the balance of cash after making payment due on the Effective Date.
4. The current projections of the plan indicate there will be a monthly shortfall of approximately \$44.89 per month (not including the 18% interest due to Riverside County on a monthly basis which is not accounted for in the Debtor's 5-Year Projection). This shortfall is particularly problematic where the Debtor is expected to make an additional quarterly payment to DSD of \$7,500 until the end of the plan, plus a balloon payment of as yet unspecified amount at the end of the plan.

Based on the foregoing, the Court's tentative ruling is to CONTINUE the hearing on approval of the First Amended DS to the date of the expected evidentiary hearing on the related Motion to Value for: (1) Debtor to address the issues raised by the Court; (2) for a determination of how the outcome of the Motion to Value hearing will impact the need for further revisions to the DS.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

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CONT... Rio Rancho Super Mall LLC

Chapter 11

**United States Bankruptcy Court
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9:30 AM

6:17-11053 Rio Rancho Super Mall LLC

Chapter 11

#3.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 3/28/17, 5/30/17, 7/25/17, 8/22/17

Also #1 & #2

EH__

Docket 6

***** VACATED *** REASON: CONTINUED TO 12/4/17 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

**United States Bankruptcy Court
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Wednesday, October 18, 2017

Hearing Room 303

10:00 AM

6:14-13046 Allen Dale Sanderson

Chapter 7

Adv#: 6:14-01116 Verbree v. Sanderson

#4.00 CONT Trial RE: [1] Adversary case 6:14-ap-01116. Complaint by Margaret Verbree against Allen Dale Sanderson. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Madoni, Stephen)

From: 10/17/17

EH__

Docket 1

***** VACATED *** REASON: ORDER ENTERED 10/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allen Dale Sanderson

Represented By
Robert K McKernan

Defendant(s):

Allen Dale Sanderson

Represented By
Robert K McKernan

Plaintiff(s):

Margaret Verbree

Represented By
Stephen A Madoni

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, October 18, 2017

Hearing Room 303

12:30 PM

6:11-12917 Brad Stoddard and Deborah Ann Stoddard

Chapter 13

#5.00 CONT Order to Show Cause Hearing Why Matthew Resnik, Brad and Deborah Stoddard should not be sanctioned
(Holding date)

From: 8/31/17, 10/2/17

Also #6

EH__

Docket 110

Tentative Ruling:

10/18/17

BACKGROUND

On January 28, 2011, Brad & Deborah Stoddard ("Debtors") filed a Chapter 13 voluntary petition. On May 24, 2011, Debtors' Chapter 13 plan was confirmed. The plan contained the following provision, section V.F.: "The debt of American Education Services will be discharged; the school has been stripped of accreditation and is on probation." On December 5, 2016, Debtors received a discharge, and, on January 13, 2017, the case was closed.

On May 11, 2017, Debtors filed a motion for an order to show cause why creditor American Educational Services ("AES") should not be held in contempt court, and for damages and attorney's fees, for intentionally violating the discharge injunction. Because of inadequate service, the motion was originally denied without prejudice, and Debtors refiled the motion on June 1, 2017. AES filed its opposition on June 8, 2017. At a hearing on the matter on July 27, 2017, the Court continued the matter to

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CONT... Brad Stoddard and Deborah Ann Stoddard
October 2, 2017.

Chapter 13

On July 31, 2017, the Court issued its Order to Show Cause why Matthew Resnik ("Resnik"), Brad Stoddard, and Deborah Stoddard should not be sanctioned for including a prohibited provision in a Chapter 13 plan (the "OSC"). Debtors filed their opposition on August 14, 2017. Resnik filed his opposition on August 17, 2017. AES filed its reply on August 24, 2017. Resnick filed supplemental responses on September 21 and 22, 2017.

DISCUSSION

I. Introduction

The OSC is issued in light of, and accordance with, the Supreme Court's decision in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). In *Espinosa*, the bankruptcy court had confirmed a Chapter 13 plan which purported to discharge student loan debt without complying with the applicable procedural requirements. After intercepting debtor's income tax refund to use towards payment of student loans, the creditor argued that the bankruptcy court's order confirming the debtor's Chapter 13 plan should be declared void. The Supreme Court held that, absent a jurisdictional or due process violation (which was not present) the bankruptcy court's legal error in confirming the Chapter 13 plan with a provision that impermissibly discharged student loan debt, did not render the order void. At the conclusion of its opinion, the Supreme Court opined:

We acknowledge the potential for bad-faith litigation tactics. But expanding the availability of relief under Rule 60(b)(4) is not an appropriate prophylaxis. As we stated in *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992), "debtors and their attorneys face penalties under various provisions for engaging in improper conduct in bankruptcy proceedings." *Id.* at 644; *see also* Fed. R. Bankr. P. Rule 9011. The specter of such penalties should deter bad-faith attempts to discharge student loan debt without the undue hardship finding

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CONT... **Brad Stoddard and Deborah Ann Stoddard**
Congress required.

Chapter 13

Espinosa, 559 U.S. at 278. Here, the Court is tasked with interpreting and implementing the guidance provided by the Supreme Court in *Espinosa*.

Debtors and Resnick have filed separate responses to the Court's OSC. Debtors have raised five arguments in their opposition: (1) that the Court already found that the plan was filed in good faith; (2) that the plan must be given *res judicata* effect; (3) that the Court is exceeding its discretionary sanctioning authority; (4) that the OSC is an illegal *ex post facto* law; and (5) that Fed. R. Bankr. P. Rule 9011 is inapplicable. Resnick offers the following categories of arguments in his opposition: (1) use of the Court's inherent sanctioning authority is inappropriate here; (2) Rule 9011 sanctions require a contempt finding; (3) Section 105 is inapplicable; and (4) the plan provision at issue is not prohibited. The Court will analyze the respondents' arguments separately.

II. Debtors' Opposition

A. The Court's Good Faith Finding

11 U.S.C. § 1325(a)(3) states:

- (a) Except as provided in subsection (b), the court shall confirm a plan if –
 - (3) the plan has been proposed in good faith and not by any means forbidden by law

Debtors argue that: "[i]t necessarily follows [from § 1325(a)(3)] that the Court has

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CONT... **Brad Stoddard and Deborah Ann Stoddard** **Chapter 13**

already made an express finding that the Plan was filed in good faith." This result does not necessarily follow from the language of the statute. The plain language of § 1325 (a) operates to eliminate the discretion of the court if the court finds that the debtor has satisfied the nine subsections of § 1325(a); the provision does not state the consequences of a finding that some, but not all, of the § 1325(a) subsections have been satisfied. As is stated by the leading bankruptcy treatise:

The standards set forth in section 1325(a), however, are not requirements that must be met in every case before a plan can be confirmed. Unlike section 1322 (a), section 1325(a) does not state that "the plan shall" comply with its listed criteria. Nor does it state, as does section 1129(a), that the court shall confirm the plan *only if* certain requirements are met. Instead it states only that if its criteria are met the court must confirm the plan. Therefore, the court has discretion to confirm a plan that does not comply with all of the standards of section 1325(a), particularly if no party objects.

8 Collier on Bankruptcy ¶ 1325.01 (16th ed. 2016) (footnotes omitted).

Despite the plain language of the statute, the Ninth Circuit Court of Appeals, without any independent analysis, and relying on an out of circuit bankruptcy court decision, has determined that the requirements of § 1325(a) are mandatory for Chapter 13 plan confirmation. *See In Chinichian*, 784 F.2d 1440, 1443-44 (9th Cir. 1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met.") (*citing In re Elkind*, 11 B.R. 473, 476 (Bankr. D. Colo. 1981)). While it remains unclear from where the mandatory characterization of § 1325(a) arose, a variety of courts have, in passing, assumed that the § 1325(a) standards are mandatory for plan confirmation. *See, e.g., Assocs. Comm. Corp. v. Rash*, 520 U.S. 953, 956 (1997) ("To qualify for confirmation under Chapter 13, the Rashes' plan had to satisfy the requirements set forth in § 1325(a) of the Code."); *Shaw v. Aurgroup Fin. Credit Union*, 552 F.3d 447, 459 (6th Cir. 2009) ("Numerous district and bankruptcy courts outside the Fifth, Ninth, Tenth, and Eleventh Circuits, including courts within this circuit, have also held, suggested, or assumed that the provision in § 1325(a) are mandatory.") (collecting cases). *But see In re Szostek*, 886 F.2d 1405, 1411 (3rd Cir. 1989) ("On the other hand, if the conditions of § 1325 are not met, although the requirements of § 1322 are fulfilled, the court has the discretion to confirm the plan. If Congress had intended for

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Chapter 13

§ 1325(a) to be mandatory, it could have included that requirement with the requirements already listed in § 1322); *see also Matter of Escobedo*, 28 F.3d 34, 34 (7th Cir. 1994) ("We note, however, as did the court in *Szostek*, that while the provisions of § 1325(a)(5) may be discretionary[,] the requirements of § 1322(a)(2) are mandatory.). Indeed, even *Espinosa* appears to implicitly assume that the § 1325(a) requirements are mandatory. *See* 559 U.S. 260, 277 ("That is because § 1325(a) instructs a bankruptcy court to confirm a plan *only* if the court finds, *inter alia*, that the plan complies with the 'applicable provisions' of the Code.") (emphasis added). Therefore, it would appear that binding case law suggests that the § 1325(a) requirements, including good faith, are mandatory requirements for confirmation.

B. Res Judicata

While the Court accepts Debtors' argument that, by confirming their Chapter 13 plan, the Court implicitly found that the plan was filed in good faith, the Court rejects Debtors' argument that that finding is *res judicata* with regard to the Court. 11 U.S.C. § 1327(a) states: "The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." The Court is not a creditor and Debtors have advanced no argument as to how § 1327(a) would prevent the Court from revisiting its finding of good faith. In fact, the Ninth Circuit Court of Appeals opinion that concluded the § 1325(a) requirements were mandatory stated the following: "Because section 1325(a)(3) of Title 11 requires the Chinichians to propose their plan in good faith, the bankruptcy court has jurisdiction to revoke a plan if the plan was not filed in good faith." *In re Chinichian*, 784 F.2d 1440, 1442 (9th Cir. 1986). The Ninth Circuit's further comments indicate that it believed such powers were expansive:

The Chinichians argue, however, that because section 1330 is a specific statute it should govern the more general section 105. The *Mancari* rationale that a specific statute cannot be nullified by a more general one is only applicable where a conflict exists.

Section 1330 provides a method of revoking a confirmation order "on request

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of a party in interest." While it does not specifically authorize such a revocation by the court sua sponte, it does not prohibit such action. Section 105 constitutes authority for the court to issue any order necessary to carry out the provisions of the Code. That reservoir of power in no manner conflicts with the authority to act upon the request of an interested party, but constitutes a supplemental method of revocation in the event of fraud. It would be absurd to hold that the bankruptcy court is powerless to correct a fraud unless first requested by an interested party, and that is not what section 1330 provides.

Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.

Further, a bankruptcy court is a court of equity. As a court of equity, it may look through form to the substance of a transaction and devise new remedies where those at law are inadequate. Further, it can modify or vacate its order so long as no intervening right has become vested in reliance thereon. Thus, the bankruptcy court had equitable power to revoke its order partially confirming the Chinichians' plan once it recognized the Chinichians did not file their plan in good faith as required by section 1325(a)(3).

Id. at 1442-43 (citations omitted).

Debtors' argument that § 1327 operates to prevent the Court from modifying its implicit good faith finding when confirming the plan lacks merit. The statute states that the terms of the provisions of a confirmed plan are binding on the debtor and creditors. The Court is not a creditor or a debtor nor is the Court's good faith finding a provision of a confirmed plan. Nor does *res judicata* prevent a court from revoking or amending its own order. Such a principle would eliminate the ability to revoke or modify a judgment altogether, rendering obsolete Fed. R. Civ. P. Rules 59 & 60, in addition to many others legal provisions. Debtors' argument that the Court is bound by its own previous finding due to *res judicata* is not compelling.

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C. The Court Lacks Authority to Issue Sanctions

Debtors' argument that the Court lacks authority to issue sanctions can be summarized in the following: (1) the Court is precluded from finding that the plan was proposed in bad faith due to *res judicata*; and (2) the Court must find that the plan was proposed in bad faith for sanctions to be warranted. Because the Court rejects (1), as outlined above, Debtors' argument must fail.

D. The OSC is an "Illegal Ex Post Facto Law"

In their fourth argument, Debtors argue that this OSC is an *ex post facto* law. As noted by Debtors, Art. 1 §§ 9 & 10 of the Constitution prohibit *ex post facto* laws. Article 1 of the Constitution deals with the legislative branch – the branch of the government that makes laws. The Judicial Branch does not make laws. Debtors' argument that a court order is an *ex post facto* law is therefore, necessarily, invalid.

E. Rule 9011 is Inapplicable

Fed. R. Bankr. P. Rule 9011(b)(2) states:

By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, --

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the

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Fed. R. Bankr. P. Rule 9011(c)(1)(B) states: "[O]n its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto."

Debtors' nine subsection argument why Fed. R. Bankr. P. Rule 9011 is inapplicable is rather chaotic and disorganized. Regardless, the Court acknowledges that, as to Debtors, Rule 9011 sanctions are inapplicable due to the operation of Rule 9011(c)(2) (A). Therefore, the Court agrees that Rule 9011 cannot operate as the source of sanctions against Debtors.

III. Resnick's Opposition

A. Inherent Sanctioning Authority

The Supreme Court has stated: "it is firmly established that the power to punish for contempts is inherent in all courts." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (quoting *Ex parte Robinson*, 19 Wall. 505, 510 (1874)); see also *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir. 2001) ("[T]he district court has the inherent authority to impose sanctions for bad faith, which includes a broad range of willful improper conduct."). The Ninth Circuit has stated: "*Itel* teaches that sanctions are justified when a party acts *for an improper purpose* – even if the act consists of making a truthful statement or a non-frivolous argument or objection. *Fink*, 239 F.3d at 922; see also *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003) (discussing bad faith and willful misconduct).

Nevertheless, as Resnick states: "when there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the Rules, the court ordinarily

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should rely on the Rules rather than the inherent power." *Chambers*, 501 U.S. at 50. Because the Court believes that the existing framework provides an adequate basis for sanctions in this type of situation, the Court need not rely on its inherent sanctioning authority.

B. Rule 9011

When imposing sanctions, *sua sponte*, under Fed. R. Bankr. P. Rule 9011, "sanctions 'will ordinarily be imposed only in situations that are *akin to a contempt of court*.'" *United Nat'l Ins. Co. v. R&D Latex Corp.*, 242 F.3d 1102, 1116 (9th Cir. 2001) (*citing Barber v. Miller*, 146 F.3d 707, 711 (9th Cir. 1998); *see also* Fed. R. Civ. P. Rule 11, Advisory Committee Notes ("Since show cause orders will ordinarily be issued only in situations that are akin to a contempt of court, the rule does not provide a 'safe harbor' to a litigant for withdrawing a claim, defense, etc., after a show cause has been issued on the court's own initiative.")). "[P]rior to imposing court-initiated sanctions, the district court is required to determine whether counsel's conduct is 'akin to contempt.'" *Gonzalez v. Texaco Inc.*, 344 Fed. Appx. 304, 308 (9th Cir. 2009) (*quoting R&D Latex Corp.*, 242 F.3d 1102, 1118)).

In this situation, the Court defers to Bankruptcy Judge TeSelle:

At the hearing on the motions to dismiss conducted by the Court in these cases on May 2, 2000, it was clear to the Court that debtors' counsel included these plan provisions in the hope that they would trap an unwary student loan creditor. If a plan containing a student loan discharge provision is confirmed, debtors and their counsel argue that the student loan obligation is discharged under the theory of *res judicata*, improperly relying on a skewed interpretation of the opinion of the Tenth Circuit Court of Appeals in *In re Andersen*, 179 F.3d 1253 (10th Cir. 1999) to support their position. If an objection to confirmation is raised by either the Trustee or the student loan creditor, the offending language is simply removed from the plan, and debtors are no worse off for their attempt. The Court will not permit this type of gamesmanship on the part of debtors and their counsel to continue. Conduct such as this has no

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place in the practice of bankruptcy law, and will not be tolerated by this Court.

The citation of the opinion of the Tenth Circuit in *Andersen, supra*, as authority for the practice of intentionally inserting language in a chapter 13 plan that violates the Bankruptcy Code and Rules, and as authorizing counsel to stand by silently and thereby induce the Court to confirm a plan that contains a provision that counsel knows violates the Bankruptcy Code and Rules, is at once offensive and specious. Counsel appearing before this Court are officers of the Court and are ethically obligated to inform the Court if they are aware of the existence of a plan provision that renders the plan non-confirmable.

Rather than recognizing their obligations to the Court and to opposing counsel, counsel for debtors in these cases go so far as to suggest that they are compelled by *Andersen* to recommend that their clients include these unlawful plan provisions, implying that their failure to do so might be an act of professional negligence. The Court does not believe that a fair reading of the opinion of the Tenth Circuit in *Andersen* can reasonably lead one to conclude that the Tenth Circuit intended to encourage the practice of intentionally inserting unlawful plan provisions in the hope that confirmation of the plan will occur and the time for appeal will pass before such provisions are noticed so that debtors and their counsel can then claim *res judicata*. Such a skewed reading of *Andersen* fails to account for the ethical obligations owed by members of the bar to the Court and to each other.

This is particularly true given the volume of chapter 13 filings in this district, and the fact that the Court does not have the time to independently review every chapter 13 plan and confirmation order to determine whether an attempt to unlawfully discharge a student loan obligation is being made. Because the Court has apparently been unable to rely on the ethical conduct of some of the counsel representing chapter 13 debtors appearing before it, the Court, up to his point in time, has been forced to rely on a party in interest other than the debtor to point out those instances in which such student loan discharges have been attempted through plan provisions. Where the Court has become aware of such attempts, either through objections by the student loan creditor or through the inclusion of such a provision in the order confirming the chapter 13 plan,

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the Court has refused to confirm the plan containing such language, and has stricken language from confirmation orders attempting to effect a discharge of student loan indebtedness in this manner.

...

In light of the existing case law concerning the impropriety of the inclusion of such student loan discharge provisions in chapter 13 plans, and the unambiguous language of the Bankruptcy Code and Rules, the Court believes that the inclusion of such a provision in a chapter 13 plan and/or order confirming a chapter 13 plan is both unethical and sanctionable conduct pursuant to Bankruptcy Rule 9011. Bankruptcy Rule 9011(b) concerns representations made to the Court. It states that by presenting a paper to the Court, an attorney or unrepresented party certifies to the best of his or her knowledge, information and belief, formed after a reasonable inquiry under the circumstances, that the legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. *See* Fed. R. Bankr. P. Rule 9011 (b)(2).

...

The Court refuses to allow counsel for debtors to turn the inclusion of a student loan discharge provision in a chapter 13 plan into a "can't lose" proposition. The Court therefore concludes that *Andersen* provides no protection from the imposition of sanctions under Rule 9011(b) in cases in which a student loan discharge provision is included in a confirmed chapter 13 plan.

In re Hensley, 249 B.R. 318, 320-323 (Bankr. W.D. Okla. 2000).

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C. Section 105

11 U.S.C. § 105(a) states:

- (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary to enforce or implement court orders or rules, or to prevent an abuse of process.

Resnick offers a single argument in support of his position that § 105(a) is inapplicable: that the provision only applies to violations of a specific court order. Resnick cites *In re Dyer* in support of this statement. 322 F.3d 1178, 1196 (9th Cir. 2003) ("Civil contempt authority allows a court to remedy a violation of a specific order (including 'automatic' orders, such as the automatic stay or discharge injunction).").

Dyer does not explicitly state that § 105(a) is strictly limited to remedying violations of specific court orders, nor does it cite any authority from which it could be inferred that the *Dyer* court had such an opinion. Indeed § 105(a) explicitly mentions, in addition to court orders, rules and "abuse of process"; the latter might be invoked in the absence of a specific court order.

The Supreme Court, on two occasions after *Dyer*, has written an opinion which

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indicates that § 105 is not strictly limited to correcting violations of specific court orders. First, in *Marrama v. Citizens Bank of Mass.*, the Supreme Court wrote:

On the contrary, the broad authority granted to bankruptcy judges to take any action that is necessary or appropriate to prevent an abuse of process described in § 105(a) of the Code, is surely adequate to authorize an immediate denial of a motion to convert filed under § 706 in lieu of a conversion order that merely postpones the allowance of equivalent relief and may provide a debtor with an opportunity to take action prejudicial to creditors.

549 U.S. 365, 375 (2007) (footnote omitted). The "abuse of process" referenced in *Marrama* was not a violation of a specific court order, but, rather, "an unmeritorious attempt to qualify as a debtor under Chapter 13." *Id.*

Second, in *Law v. Siegel*, the Supreme Court stated: "Section 105(a) confers authority to 'carry out' the provisions of the Code." This statement is natural, since the first sentence of § 105(a) states: "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

Here, the Court concludes that a specific and definite court order has not been violated. Nevertheless, the reconciliation of *Dyer* and *Marrama* helps illustrate the proper approach forward. The Ninth Circuit Court of Appeal's instructions that sanctions under § 105(a) are appropriate for violation of a specific and definite court order is derived from the non-bankruptcy standard for civil contempt. *See F.T.C. v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999) (*quoting Stone v. City & Cnty. of S.F.*, 968 F.2d 850, 856 n.9 (9th Cir. 1992)) ("The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court. The burden then shifts to the contemnors to demonstrate why they were unable to comply."). Nevertheless, as illustrated by *Marrama*, the Court's authority under § 105(a) is not strictly limited to issuing sanctions for civil contempt. While a civil contempt finding under § 105(a) may not be appropriate in these circumstances, it does not follow that the Court lacks the ability to adequately and equitably resolve this situation.

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TENTATIVE RULING

The Court is inclined to CONTINUE the hearing for approximately thirty days to allow Debtors to file a supplemental brief addressing why they should not be sanctioned pursuant to the Court's inherent sanctioning authority. No further briefing from Resnick is requested.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Brad Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Joint Debtor(s):

Deborah Ann Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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#6.00 CONT Motion For Order To Show Cause Why Creditor American Educational Services and Educational Credit Management Corporation Should Not Be Held in Contempt of Court, and For Damages and Attorney's Fees, for Intentionally Violating The Discharge Injunction

From: 7/27/17, 10/2/17

Also #5

EH__

Docket 96

Tentative Ruling:

10/18/17

I. BACKGROUND

On January 28, 2011, Brad & Deborah Stoddard ("Debtors") filed a Chapter 13 voluntary petition and plan. Debtors' plan contained a provision, in section V.F, that stated: "The debt of American Education Services will be discharged; the school has been stripped of accreditation and is on probation." The plan was served on American Education Services at P.O. Box 2461, Harrisburg, PA 17105-2461.

On March 14, 2011, "Brazos/US Bank Natnl" filed a proof of claim ("Claim 5") for an unsecured claim in the amount of \$35,080.90 on the basis of a student loan. The proof of claim indicating that notices should be sent to "AES/PHEAA, PO Box 8181, Harrisburg, PA 17105." On March 17, 2011, the Court summarily confirmed Debtors' plan on the basis of the trustee's recommendation. On March 30, 2011, AES/PHEAA filed a transfer of claim agreement, stating that Claim 5 was being transferred to AEA/PHEAA, and that notices should be sent to "AES/PHEAA, PO Box 8147,

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Harrisburg, PA 17105." On May 24, 2011, the Court entered an order confirming Debtors' plan.

On December 5, 2016, Debtors received a discharge. On June 1, 2017, Debtors filed a motion for an order to show cause why American Educational Services ("AES") should not be held in contempt for violating the discharge injunction. On June 8, 2017, AES filed its opposition. Debtors allege that the AES violated the discharge injunction through various attempts to collect on Claim 5 after Debtors received a discharge. AES asserts that they did not violate the discharge injunction because: (1) AES was not a creditor at the time Debtor filed their plan; (2) the provision at issue in Debtors' plan was unclear; and (3) Debtors' failure to utilize the appropriate procedure precludes the relief sought.

After a hearing on July 27, 2017, the Court issued an order to show cause why Debtors and their former counsel, Matthew Resnik ("Resnik"), should not be sanctioned for including a prohibited provision in a Chapter 13 plan (the "OSC"). On August 14, 2017, Debtors filed their opposition. On August 17, 2017, Resnik filed his opposition. On August 24, 2017, AES filed a reply. After a hearing on August 31, 2017, the Court continued the matter to October 2, 2017. On September 21 & 22, 2017, Resnik supplemented his response.

II. DISCUSSION

A person who knowingly violates the discharge injunction can be held in contempt under § 105(a) of the Bankruptcy Code. *See In re Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002). The moving party has the burden of showing by clear and convincing evidence that the contemnors knowingly and willfully violated a specific and definite order of the court. *Id.* In addition, the moving party must prove that the creditor: (1) knew the discharge injunction was applicable; and (2) intended the actions which violated the injunction in order to justify sanctions. *Id.*

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Here, the critical issue is whether Debtors' plan effectively resulted in a discharge of the debt upon which AES subsequently attempted to collect. There are three distinct issues that warrant attention in connection with the above issue: (1) whether Debtors' plan was sufficiently clear regarding the debt to be discharged; (2) whether holding that Claim 5 was discharged would violate principles of due process; and (3) whether, and to what extent, it would be appropriate for the Court to exercise its equitable remedies.

I. The Plan Provision

The plan provision at issue states: "The debt of American Education Services will be discharged; the school has been stripped of accreditation and is on probation." It is crucial that a miscellaneous provision included within a Chapter 13 plan both identify the creditor and claim to be affected by the plan, and explain the proposed treatment of the debtor's claim. Here, it is not clear that the above provision was adequate in either respect.

First, at the time of the petition date, at the time of the filing of the plan containing the above provision, and at the time of the confirmation hearing, AES was not the holder of Claim 5, but was merely the servicer of Claim 5. While AES subsequently acquired the claim, after the confirmation hearing but before the confirmation order was entered, that subsequent acquisition does not change the fact that AES was not a creditor of Debtors at the time of confirmation, or at the time that service of the plan was made. Although AES did acquire a claim against Debtor between the confirmation hearing and the entry of the confirmation order, such acquisition occurred too late for AES to have an opportunity to timely object to the subject plan provision.

Nor does the fact that Claim 5 identified AES as the party to be noticed affect who was the actual creditor of Debtors. While that identification affects the propriety of the notice given, it does not affect the characterization of AES as a loan servicer, rather

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than a creditor. A loan servicer is not a proper defendant in a non-dischargeability adversary proceeding, *see In re Kleckner*, 560 B.R. 172, 177 (Bankr. E.D. Pa. 2016), and, likewise, it is not the proper party in a "discharge by declaration."

Furthermore, the contractual interpretation canon that ambiguous language is to be construed against the drafter is appropriate in this circumstance. *See generally Maryland Cas. Co. v. Knight*, 96 F.3d 1284, 1291 (9th Cir. 1996) (identifying canon). The actual holder of the claim, "Brazos/US Bank Natnl," had no reason to object to the proposed plan, because they were not identified in the plan. Even if "Brazos/US Bank Natnl" were aware that AES was the loan servicer, AES services many loans, and it is entirely possible, indeed probably common, that AES services multiple loans for many individuals. *See, e.g., In re Kleckner*, 560 B.R. 172, 173 n.1 (Bankr. E.D. Pa. 2016) (AES was servicer for loans held by six different entities). Furthermore, "Brazos/US Bank Natnl" was not served with the plan or noticed of the confirmation hearing, and, therefore, was denied due process. AES meanwhile was not a creditor at the time the plan was served, and would have had no reason to object to plan confirmation; indeed, it is not even clear that AES was a party in interest with standing to object.

Finally, the subject plan provision is unclear regarding the proposed treatment of the "claim." While the plan provision indicates that the claim "will be discharged" it does not indicate any timeframe or conditions for discharge.

While at first glance it may seem that the phrase means the claim is to be discharged upon plan completion, the situation is not so simple. What would have been the effect if Debtors had stated that the claim was to be discharged immediately upon plan confirmation? While such a premature discharge violates the Code, a discharge of a student loan debt at plan completion, without an adversary proceeding and an "undue hardship" determination, also violates the Code. But by using the word "will," a future tense verb, Debtors appear to have intended that the claim would be discharged at some future time, after some further event. Is that future event the completion of plan payments? Or is that event the successful prosecution of an adversary proceeding? Given such ambiguity, in construing such ambiguous language against the draft, the Court determines that it is appropriate to adopt the most legally appropriate interpretation, that discharge here is subject to an unperformed condition precedent (i.e. the filing of a non-dischargeability complaint), and the condition has not been

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satisfied, as a complaint has not been filed..

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In accordance with the above, the Court finds that the subject plan provision, in the absence of a subsequent adversary proceeding, was inadequate to discharge Claim 5.

II. Notice & Due Process

As is noted in section I, *supra*, there are three different PO boxes in Harrisburg, Pennsylvania that are relevant here: (1) PO Box 8181, the address located on Claim 5; (2) PO Box 8147, the address located on the claim transfer filed with the Court; and (3) PO Box 2461, the address where Debtors served their plan. The record does not detail the precise function of each of these PO boxes, but, presumably, each PO Box is associated with a different department at AES.¹

Assuming, *arguendo*, AES was a creditor at the time of the service of the plan, or if Debtors' plan provision were to have properly identified the debt, would AES have received due process through the service effectuated by Debtors? The Supreme Court, in *Espinosa*, deferred to the traditional recitation of due process in this situation: "[d]ue process requires notice 'reasonable calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). In *Espinosa*, the Supreme Court concluded that the creditor had received actual notice ostensibly because United Student Aid Funds, Inc. filed a proof of claim. *Id.* at 265. Here, the same situation is present – Claim 5 was filed prior to the confirmation hearing and appears to be evidence that the holder of Claim 5 had actual notice of the bankruptcy filing prior to confirmation.

III. Equitable Remedies

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Even before the Supreme Court decided *Espinosa*, the Ninth Circuit was of the position that a creditor was precluded from challenging a confirmation order, even if the confirmation order contained an illegal provision, if that creditor failed to object during the confirmation process. *See, e.g., In re Pardee*, 193 F.3d 1083, 1086 (9th Cir. 1999) (*citing Trulis v. Barton*, 107 F.3d 685, 691 (9th Cir. 1995); *In re Gregory*, 705 F.2d 1118, 1121 (9th Cir. 1983)). The Ninth Circuit's approach was the minority approach. *See, e.g., In re Escobedo*, 28 F.3d 34, 35 (7th Cir. 1994) (confirmed plan that failed to comply with Code's requirements was "nugatory"); *see also* 8 Collier on Bankruptcy ¶ 1325.01 (16th ed. 2016) (endorsing the Ninth Circuit's approach, but collecting cases which indicate that the Second, Fourth, Sixth, and Seventh Circuits disagreed).

While *Espinosa* declared that a confirmation order was not void simply because it contained an illegal provision, and Ninth Circuit precedent indicates that a creditor is estopped from challenging a confirmation order after the fact, a review of the case law from the previously dissenting circuits illustrates the procedural mechanisms available to the Court, rather than a creditor. For instance, one court, in reconsidering and vacating a confirmed Chapter 13 plan stated the following:

Relief from judgment under Rule 60(b) may be granted *sua sponte* by the court. A decision under Rule 60(b) is a matter of the court's discretion. The Rule's requirement that relief be granted within a 'reasonable time' also rests within the sound discretion of the court. While relief under Rule 60(b) is discretionary, it is warranted only upon a showing of extraordinary circumstances that create a substantial danger that the underlying judgment was unjust. The court should also look to whether any intervening rights have been affected by the passage of time since entry of the original judgment.

In re Burgess, 138 B.R. 56, 59 (Bankr. W.D. Wis. 1991); *see also In re Carr*, 318 B.R. 517 (Bankr. W.D. Wis. 2004) (utilizing the Court's discretion to revoke, on equitable grounds, a confirmation order that violated the Code). There is no strict timeline for relief from a judgment or order pursuant to Fed. R. Civ. P. Rule 60(b)(4)-(6). *See, e.g., In re Hanson*, 397 F.3d 482 (7th Cir. 2005) (modifying discharge order to exclude student loan creditor nearly six years later).

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The Court is cognizant of the fact that, unlike most of the cases above, in this situation the Chapter 13 plan was completed, Debtors received a discharge, and the case was closed. The length of time that has elapsed would be a critical factor in any analysis considering whether to revoke or modify the Chapter 13 confirmation order pursuant to Rule 60(b)(6). Currently, there is no motion filed by AES pending before the Court implicating a Rule 60(b)(6) analysis, and because the Court finds that Debtors' drafting errors precludes a finding that Claim 5 was discharged, the Court declines to undertake such analysis at the current time.

IV. CONCLUSION

In accordance with Section II.I, *supra*, the Court concludes that Claim 5 was not discharged. Because Claim 5 was not discharged, there can be no violation of the discharge injunction, and, therefore, the motion is DENIED.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Brad Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Joint Debtor(s):

Deborah Ann Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Movant(s):

Deborah Ann Stoddard

Represented By
Matthew D Resnik

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Matthew D Resnik
David Brian Lally
David Brian Lally

Brad Stoddard

Represented By
Matthew D Resnik
Matthew D Resnik
David Brian Lally
David Brian Lally

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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6:14-18549 Matthew Joseph Pautz and Alice Louise Pautz

Chapter 7

#7.00 CONT Order to Show Cause re Bodily Detention Order

From: 8/15/17, 9/18/17

EH__

Docket 135

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Matthew Joseph Pautz

Represented By
Stephen D Brittain

Joint Debtor(s):

Alice Louise Pautz

Represented By
Stephen D Brittain

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Samuel J Romero

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Thursday, October 19, 2017

Hearing Room 303

12:30 PM

6:11-43583 Richard H Brown, Jr.

Chapter 13

Adv#: 6:17-01029 Cohen v. Bank of America, NA et al

#1.00 CONT Status Conference Re Complaint by Amrane Cohen against Bank of America, NA, Ocwen Loan Servicing, LLC, New Penn Financial LLC dba Shellpoint Mortgage Servicing: Nature of Suit: 14 - Recovery of money/property - other, 02 - Other: e.g. other actions that would have been brought in state court if unrelated to bankruptcy, 91 - Declaratory judgment

From: 4/6/17, 5/11/17, 6/8/17, 8/17/17, 9/14/17

EH__

Docket 1

***** VACATED *** REASON: CASE DISMISSED 9/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard H Brown Jr.

Represented By
Gary J Holt

Defendant(s):

Ocwen Loan Servicing, LLC

Pro Se

Bank of America, NA

Pro Se

Plaintiff(s):

Amrane Cohen

Pro Se

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 19, 2017

Hearing Room 303

12:30 PM

6:12-15987 James W Smith, Sr. and Cynthia Smith

Chapter 13

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

From: 5/11/17, 7/20/17, 7/27/17

Also #3

EH _____

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James W Smith Sr.

Represented By
Jenny L Doling

Joint Debtor(s):

Cynthia Smith

Represented By
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 19, 2017

Hearing Room 303

12:30 PM

6:12-15987 James W Smith, Sr. and Cynthia Smith

Chapter 13

#3.00 Motion RE: Objection to Claim Number 7 by Claimant Internal Revenue Service

Also #2

EH__

Docket 72

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James W Smith Sr.

Represented By
Jenny L Doling

Joint Debtor(s):

Cynthia Smith

Represented By
Jenny L Doling

Movant(s):

Cynthia Smith

Represented By
Jenny L Doling
Jenny L Doling

James W Smith Sr.

Represented By
Jenny L Doling
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 19, 2017

Hearing Room 303

12:30 PM

6:12-23206 Donald Vinson Frantz and Donna Peck Frantz

Chapter 13

#4.00 CONT Trustee's Motion to Dismiss Case Due to Material Default

From: 8/17/17

Also #5

EH__

Docket 116

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald Vinson Frantz

Represented By
Jenny L Doling

Joint Debtor(s):

Donna Peck Frantz

Represented By
Jenny L Doling

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 19, 2017

Hearing Room 303

12:30 PM

6:12-23206 Donald Vinson Frantz and Donna Peck Frantz

Chapter 13

#5.00 CONT Motion to Avoid Junior Lien with The Bank of New York Mellon, as Trustee for CWHEQ Home Equity Loan Asset Backed Certificates, Series 2006-S9 and Nationstar Mortgage, LLC (Servicer)

From: 8/17/17

Also #4

EH__

Docket 121

Tentative Ruling:

08/17/2017

Summary of the Motion:

Notice: Proper

Opposition: Trustee Comments recommending Disapproval

Address: 80781 Canyon Trail, Indio, CA 92201

First trust deed: \$373,320.10 (Proof of Claim No. 7)

Second trust deed (to be avoided): \$46,392.63 (Proof of Claim No. 8)

Fair market value: \$197,500 (Debtor Decl. ¶5)

TENTATIVE

The Debtors' case was filed on May 30, 2012. On August 21, 2012, the Debtors' plan was confirmed. The plan provided, in pertinent part, "Bank of America, N.A.: Debtor (s) intend to avoid lien." (Plan at V.F. Miscellaneous provisions). A proof of claim indicating that the secured junior lien scheduled by Debtors as BOFA was actually held by Bank of New York Mellon. (Proof of Claim No. 8, filed 10/17/2012).

On May 30, 2017, the Trustee filed a Motion to Dismiss due to Material Default based on the Debtors' failure to file the lien avoidance motion indicated in the plan.

In response, five years after they said they would, Debtors filed their Motion to Avoid the Lien of Bank of New York Mellon ("Motion"). The Motion seeks to avoid the lien

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CONT... Donald Vinson Frantz and Donna Peck Frantz Chapter 13

of Bank of New York Mellon ("Bank"). The Motion is deficient in that it contains insufficient evidence of the fair market value of the Property which is supported only by the opinion (without foundation) of the Debtor.

The Debtors assert that they should be permitted to avoid the lien at issue because the confirmed plan contemplated such avoidance and because the Bank agreed to its treatment at the time (the Bank's counsel has since indicated that the servicer has changed since the time of the Bank's original consent and as such no stipulation is currently forthcoming). Separately, Debtor underscores that the Bank has not opposed the Motion and that such failure to file opposition should be deemed consent.

On August 4, 2017, the Trustee filed comments recommending disapproval of the Motion based on (1) unreasonable delay by the Debtors; (2) the plan would be rendered infeasible by an order avoiding the lien of the Bank (it appears that Trustee treated the Bank's claim as secured due to the lack of an order avoiding the lien and has thus only paid the Bank's arrears through the plan (or \$1,924.18), however, if the lien is now avoided, the estate would need to pay 69.64% of the Bank's claim or approx. \$29,043.33, plus trustee's fees; (3) the plan is already in month 62; (3) between 2012 and 2014, Debtors received Proof of Claim No. 8, and "several notices" from the Trustee indicating that the Trustee was only making the payments on the Bank's arrears through the plan but delayed until the end of the plan to take action.

In Reply, the Debtors assert that (1) the Trustee has no standing to object to the Motion; (2) the Bank has already received more than it would have received as an unsecured creditor (presumably, had the Trustee not increased the dividend to the other creditors based on the failure by Debtors to timely avoid the Bank's lien); and (3) the Trustee never sought to modify the chapter 13 plan to propose a higher dividend be paid to unsecured creditors.

Here, the Court has reviewed the holding in *In re Chagolla*, 544 B.R. 676 (9th Cir. BAP 2016) and finds that it persuasively provides support for the untimely filing of a motion to avoid lien. Moreover, where here, the Motion appears to have been filed prior to the entry of discharge or the closing of the case, avoidance appears to be legally permissible. Additionally, as pointed out by the Debtors, the Bank has filed no opposition or response. However, the Motion is insufficient on its face because there is insufficient evidence as to the fair market value of the Property.

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CONT... Donald Vinson Frantz and Donna Peck Frantz

Chapter 13

Separately, although the Trustee's comments do not provide a sufficient basis upon which to deny the Motion itself, the Trustee's may suffice to support dismissal of the case, which the Court shall consider separately in connection with Matter No. 4.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Donald Vinson Frantz

Represented By
Jenny L Doling

Joint Debtor(s):

Donna Peck Frantz

Represented By
Jenny L Doling

Movant(s):

Donna Peck Frantz

Represented By
Jenny L Doling
Jenny L Doling

Donald Vinson Frantz

Represented By
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:12-36765 Karen Patricia Boyd

Chapter 13

#6.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

EH__

Docket 67

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/17/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Karen Patricia Boyd

Represented By
David Lozano

Movant(s):

Karen Patricia Boyd

Represented By
David Lozano
David Lozano

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
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Thursday, October 19, 2017

Hearing Room 303

12:31 PM

6:12-20802 Reynaldo Gutierrez and Corinna Delgado-Gutierrez

Chapter 13

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

From: 7/27/17

EH__

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Reynaldo Gutierrez

Represented By
Steven J Diamond

Joint Debtor(s):

Corinna Delgado-Gutierrez

Represented By
Steven J Diamond

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

12:31 PM

6:12-25054 James Edward Bierly and Betty Ann Bierly

Chapter 13

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

EH__

Docket 102

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/12/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Edward Bierly

Represented By
Hector C Perez

Joint Debtor(s):

Betty Ann Bierly

Represented By
Hector C Perez

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
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Thursday, October 19, 2017

Hearing Room 303

12:31 PM

6:12-31792 Jesse Delgado and Rocio Delgado

Chapter 13

#9.00 Trustee's Motion to Dismiss Case Due to Material Default

Also #10 & #10.1

EH__

Docket 142

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/28/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesse Delgado

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Rocio Delgado

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

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6:12-31792 Jesse Delgado and Rocio Delgado

Chapter 13

#10.00 Trustee's Motion to Dismiss Case Due to Material Default

Also #9 & #10.1

EH__

Docket 145

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesse Delgado

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Rocio Delgado

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
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12:31 PM

6:12-31792 Jesse Delgado and Rocio Delgado

Chapter 13

#10.10 Motion to Avoid Lien on Household Goods under Section 522(f)(1)(B)(i)

Also #9 & #10

EH__

Docket 148

Tentative Ruling:

10/19/17

BACKGROUND

On September 21, 2012, Jesse & Rocio Delgado ("Debtors") filed a Chapter 13 voluntary petition. On December 11, 2012, Debtors' Chapter 13 plan was confirmed.

The plan has been modified four time since confirmation.

On August 29, 2017, Trustee filed a motion to dismiss for material default. On the same day, Debtors amended their Schedule D. On September 13, 2017, Debtors filed opposition to the Trustee's motion to dismiss, stating that, pursuant to the terms of the confirmed plan, Debtors were to file a lien avoidance motion, avoiding a lien with Springleaf Financial, which would resolve Trustee's motion to dismiss. On September 13, 2017, Debtors also filed their lien avoidance motion.

Debtors' motion seeks to avoid a lien in amount of \$3,807. The collateral for this lien is not completely clear. Debtors' declaration states that the security is "household goods and furnishings." Exhibit C of Debtors' motion, titled Personal Property Appraisal Form, seems to indicate that the lien is secured by two televisions, with an aggregate value of \$2,500. The actual Loan Agreement references the Personal

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CONT... **Jesse Delgado and Rocio Delgado**

Chapter 13

Property Appraisal Form, and it appears that the extent of the collateral is the two televisions.

DISCUSSION

11 U.S.C. § 522(f)(1)(B)(i) states:

(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is –

(B) a nonpossessory, nonpurchase-money security interest in any –

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household of the debtor or dependent of the debtor

There are several issues in applying the above provision to the situation here. First of all, the lien to be avoided must impair an exemption of the Debtors. Debtors' motion states that they have exempted the property pursuant to Cal. Code Civ. P. § 703.140 (b)(3), which states:

(b) The following exemptions may be elected as provided in subdivision (a):

(3) The debtor's interest, not to exceed six hundred dollars (\$600) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

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CONT... Jesse Delgado and Rocio Delgado

Chapter 13

Debtors have listed the value of the televisions at \$525 each. 11 U.S.C. § 522(f)(4)(A) (v), however, specifically states that the term "household goods," for purposes of § 522(f)(1)(B)(i), is limited to one television. Debtors' attempt to avoid the lien with respect to multiple televisions would appear to be statutorily impermissible.

As such, Debtors may only avoid the lien as to one television, but have not identified either television with any specificity (i.e., serial number).

Finally, Debtors' Schedule D specifically refers to the secured claim of Springleaf Financial as a "purchase money security," which appears to prevent the lien from being avoidable under § 522(f)(1)(B), because that provision only applies to "nonpossessory, nonpurchase-money security interest(s)."

TENTATIVE RULING

The Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jesse Delgado

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

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CONT... **Jesse Delgado and Rocio Delgado**

Chapter 13

Joint Debtor(s):

Rocio Delgado

Represented By

Dale Parham - INACTIVE -

Michael Smith

Sundee M Teeple

Movant(s):

Rocio Delgado

Represented By

Dale Parham - INACTIVE -

Dale Parham - INACTIVE -

Dale Parham - INACTIVE -

Michael Smith

Michael Smith

Michael Smith

Sundee M Teeple

Sundee M Teeple

Sundee M Teeple

Jesse Delgado

Represented By

Dale Parham - INACTIVE -

Michael Smith

Sundee M Teeple

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By

Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
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Hearing Room 303

12:31 PM

6:12-33019 Michael Wayne Branning

Chapter 13

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

EH__

Docket 67

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Wayne Branning

Represented By
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, October 19, 2017

Hearing Room 303

12:31 PM

6:12-34893 Jose M Munguia-Hernandez

Chapter 13

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

EH__

Docket 43

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose M Munguia-Hernandez

Represented By
D Justin Harelik
Steven A Alpert

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)
Amrane (SA) Cohen (TR)

**United States Bankruptcy Court
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Thursday, October 19, 2017

Hearing Room 303

12:31 PM

6:12-34965 Kurtis Freeman Bottorf

Chapter 13

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

EH__

Docket 59

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kurtis Freeman Bottorf

Represented By
James D Zhou

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Thursday, October 19, 2017

Hearing Room 303

12:31 PM

6:12-36623 Michael Duane Cummings and Sauna Denise Cummings

Chapter 13

#14.00 CONT Trustee's Motion to Dismiss Case

From: 8/17/17, 9/14/17

EH__

Docket 119

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/18/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Duane Cummings

Represented By
Devin Sawdayi

Joint Debtor(s):

Sauna Denise Cummings

Represented By
Devin Sawdayi

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
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Thursday, October 19, 2017

Hearing Room 303

12:32 PM

6:16-20260 Javier Lopez

Chapter 13

Adv#: 6:17-01054 Amarillo College of Hairdressing, Inc. v. Lopez

#15.00 CONT Status Conference Re: Complaint by Amarillo College of Hairdressing, Inc., against Javier Lopez. false pretenses, false representation, actual fraud, 67 - Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 68 - Dischargeability - 523(a)(6), willful and malicious injury

From: 5/11/17, 6/22/17, 8/17/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Javier Lopez

Represented By
Christopher Hewitt

Defendant(s):

Javier Lopez

Pro Se

Joint Debtor(s):

Carmen Lopez

Represented By
Christopher Hewitt

Plaintiff(s):

Amarillo College of Hairdressing,

Represented By
Eamon Jafari

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-10702 Miriam Louise Preisendanz

Chapter 13

#16.00 CONT Motion for Order Disallowing Claim Filed by American Express Bank FSB
[Claim #10]

From: 8/31/17

EH__

Docket 37

Tentative Ruling:

8/31/17

Background:

On January 28, 2017, Miriam Preisendanz ("Debtor") filed a Chapter 13 voluntary petition. Debtor's Chapter 13 plan was confirmed on March 15, 2017.

On May 16, 2017, American Express Bank, FSB ("American Express") filed an unsecured claim in the amount of \$11,316.57 ("Claim 10"). On July 22, 2017, Debtor filed an objection to Claim 10. On August 16, 2017, American Express filed a response.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in

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CONT... **Miriam Louise Preisendanz**

Chapter 13

interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. See *In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. See *Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Debtors argue that the statute of limitations is four years for Creditor's claim and that Creditor's claim is therefore barred. Cal. Code Civ. P. § 337(2) provides for a statute of limitations of four years for:

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CONT... Miriam Louise Preisendanz

Chapter 13

An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgement of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

Cal. Code Civ. P. § 337(1) provides that the statute of limitations is also four years for claims based upon a contract.

American Express's response is that the Cash Rebate Cardmember Agreement includes a choice of law provision that identifies Utah as the governing law. American Express further asserts that the statute of limitations for its claim is six years under Utah law, and that, therefore, its claim is not barred. The Cash Rebate Cardmember Agreement states, under the section applicable law:

This Agreement and your Account, and all questions about their legality, enforceability and interpretation, are governed by the laws of the State of Utah (without regard to internal principles of conflicts of law), and by applicable federal law. We are located in Utah, hold your Account in Utah, and entered into this Agreement with you in Utah.

As is noted by American Express, the Ninth Circuit, relying on the Restatement (Second) of Conflict of Laws § 142, previously stated:

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CONT... Miriam Louise Preisendanz

Chapter 13

The application of § 142 compels the conclusion that California's shorter statute of limitations does not apply here, because the case presents the sort of "exceptional circumstances" under which the 1988 version of the Second Restatement looks past the law of the forum, and applies a longer foreign limitations period. The Restatement, to be sure, does not provide an exhaustive or technical definition of an exceptional circumstance. Nevertheless, the comment to the 1988 version of § 142 makes clear that the present case comes within that category. Indeed, this case is on all fours with the Restatement's *only* example of what would constitute such a "special," "unjust" circumstance: "[W]hen through no fault of the plaintiff an alternative forum is not available as, for example, where jurisdiction could not be obtained over the defendant in any [other] state . . ."

In re Sterba, 852 F.3d 1175, 1180 (9th Cir. 2017). In the absence of any argument to the contrary, the Court finds that Utah law provides the applicable statute of limitations.

While American Express argues that the statute of limitations in Utah for credit card debt is six years, Utah's statutes are unclear. The Court of Appeals of Utah has recently stated:

As both parties agree, the question of which limitations period applies to actions on credit card accounts is an issue of first impression in Utah. Stocks argues that the four-year period applicable to "open store account[s] for [the purchase of] any good, wares, or merchandise" and to "open account[s] for work, labor or services rendered, or materials furnished," *see* Utah Code Ann. § 78B-2-307, is the correct one; Asset Acceptance contends that it should be the six-year period applicable to "any contract, obligation, or liability founded upon an instrument in writing," *see id.* § 78B-2-309. In other jurisdictions

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where a similar issue has been addressed, the results have been mixed and often involve statutory language that differs from our own in ways that may or may not be significant. And the question presented here is an important one that deserves attention, whether judicial or legislative, given the universality of credit cards in our society and the number of collection cases involving credit card debt that make their way into our courts. But precisely because the issue is important and may have widespread impact, we decline to attempt to resolve an issue of first impression in a case with the sort of procedural deficits this one contains.

Asset Acceptance LLC v. Stocks, 376 P.3d 322, 327 (Ct. App. Utah 2016) (footnotes omitted). Utah Code Ann. § 78B-2-307(1) states:

An action may be brought within four years:

(1) after the last charge is made or the last payment is received:

- (a) upon a contract, obligation, or liability not founded upon an instrument in writing
- (b) on an open store account for any goods, wares, or merchandise; or
- (c) on an open account of work, labor or services rendered, or materials furnished.

And Utah Code. Ann. § 78B-2-309(2) states:

An action may be brought within six years:

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- (2) upon any contract, obligation, or liability founded upon an instrument in writing, except those mentioning in Section 78B-2-311

In equivocating upon the statute of limitations, the Court of Appeals of Utah left a footnote identifying several states that had addressed the situation. *Stocks*, 376 P.3d 322, 327 n.3. The split identified by the Court of Appeals of Utah appears to center on whether the reviewing court believed that a credit card agreement should be interpreted as a written contract or an oral contract; i.e. whether a credit card agreement was sufficient to satisfy the formalities of contract formation. *Compare, e.g., Portfolio Acquisitions LLC v. Feltman*, 391 Ill. App. 3d. 642, 651-52 (App. Ct. Ill. 2009) ("Accordingly, the contract at issue is considered to be an oral contract for purpose of the statute of limitations and the five-year period of section 13-205 applies.") with *Hill v. Am. Express*, 289 Ga. App. 576, 577-78 (Ct. App. Ga. 2008) (credit card agreement is written contract).

Despite not alerting the Court to the unsettled nature of the question in Utah, American Express appears to have anticipated this analysis, including in its opposition a brief argument that Utah law recognizes a credit card agreement as a written contract. *See In re Cluff*, 313 B.R. 323, 334 (Bankr. D. Utah. 2004) ("Under the test this Court has articulated, these credit card debts are based on writing."). This argument is unconvincing, primarily because *In re Cluff* was not interpreting Utah law, but, rather, the Federal Rules of Bankruptcy Procedure.¹ *Id.*

The Court notes, however, that Utah Code Ann. § 25-5-4(2)(e) states:

(e) A credit agreement is binding and enforceable without any signature by the party to be charged if:

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- (i) the debtor is provided with a written copy of the terms of the agreement;
- (ii) the agreement provides that any use of the credit offered shall constitute acceptance of those terms;
- (iii) after the debtor receives the agreement, the debtor, or a person authorized by the debtor, requests funds pursuant to the credit agreement or otherwise uses the credit offered.

Here, the agreement clearly satisfied the second requirement. The Court lacks an evidentiary record to determine whether the debtor was provided with a written copy of the agreement and requested funds after receiving the agreement. If the requirements of Utah Code Ann. § 25-5-4(2)(e) were satisfied, the Court concludes that a Utah court would find the credit agreement enforceable, per the statute. *See MBNA Am. Bank, N.A. v. Goodman*, 140 P.3d 589, 592 (Ct. App. Utah 2006). If the credit agreement is enforceable, then the claim of American Express would appear to be founded upon an instrument in writing, and the six year statute of limitations would apply.

Exhibit A provided by American Express, however, indicates that on April 18, 2011, there was a \$15 agency remittance, which is referred to by American Express as a "payment." It is unclear if this is in fact a payment. If it is not a payment, to adopt American Express's argument that this "agency remittance" tolls the statute of limitations would allow a creditor the means to unilaterally toll the statute of limitations indefinitely.

Furthermore, the Court notes that Exhibit A to American Express's opposition is not the same form as is included in the proof of claim. Claim 10 shows activity for 2012, indicates that the last transaction was in June 2008, that the account was charged off in January 2009, and that the last payment was made in April 2011.

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Parties to address the nature of the April 18, 2011, "agency remittance."

Tentative Ruling

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Miriam Louise Preisendanz

Represented By
Danny K Agai

Movant(s):

Miriam Louise Preisendanz

Represented By
Danny K Agai

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-11261 Ernie Macias

Chapter 13

#17.00 Motion Of United States Trustee For An Order To Show Cause Why Alon Darvish Should Not Be Held In Contempt Of Court Pursuant To 11 U.S.C. § 105 And Federal Rule Of Bankruptcy Procedure 9020

EH__

Docket 25

Tentative Ruling:

10/19/17

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ernie Macias

Represented By
Alon Darvish

Movant(s):

United States Trustee (RS)

Represented By
Mohammad Tehrani

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-11831 Gregory Dwight Vit

Chapter 13

#18.00 Motion RE: Objection to Claim Number 1 by Claimant The Bank of New York Mellon

EH__

Docket 26

Tentative Ruling:

10/19/17

Background:

On March 9, 2017, Gregory Vit ("Debtor") filed a Chapter 13 voluntary petition. On May 9, 2017, Debtor's Chapter 13 plan was confirmed. On May 16, 2017, The Bank of New York Mellon ("Creditor") filed a secured claim in the amount of \$401,998.25 ("Claim 1").

On September 15, 2017, Debtor filed an objection to Claim 1. Debtor argued that the deferred principal balance should not be included in the amount to cure default, and requested that Claim 1 be amended. On October 4, 2017, Creditor amended Claim 1 to satisfy Debtor's request.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy

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Chapter 13

Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. See *In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. See *Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Creditor has amended Claim 1 to indicate that \$105,216.79 is necessary to cure the default, satisfying Debtor's request.

Tentative Ruling

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The Court will DISMISS the claim objection as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Gregory Dwight Vit

Represented By
Christopher J Langley

Movant(s):

Gregory Dwight Vit

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-14908 Joan Eleanor Demiany

Chapter 13

#19.00 Motion RE: Objection to Claim Number 1 by Claimant Internal Revenue Service

EH__

Docket 22

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joan Eleanor Demiany

Represented By
Jenny L Doling

Movant(s):

Joan Eleanor Demiany

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-15032 Ruben Lopez and Jessica Lopez

Chapter 13

#20.00 Objection to Claim #2 by County of San Bernardino

EH__

Docket 19

Tentative Ruling:

10/19/17

Background:

On June 16, 2017, Ruben & Jessica Lopez ("Debtors") filed a Chapter 13 voluntary petition. On July 3, 2017, the County of San Bernardino ("Creditor") filed a secured claim in the amount of \$6,916.41 ("Claim 2"). On August 2, 2017, Debtors' Chapter 13 plan was confirmed. On September 13, 2017, Debtor filed an objection to Claim 2, arguing that they were current on their payments to Creditor.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *See Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving

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Chapter 13

rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Claim 2 appears to indicate that it is based on projected 2017 property taxes. Debtors have provided two documents in its claim objection: (1) a mortgage statement, which is not directly relevant; and (2) a tax bill for what appears to be 2014 or 2015, although the header of the tax bill states that it is "as of 8/28/2017."

On the other hand Claim 2 is unclear. Claim 2 references a projected indebtedness; it is not clear whether the claim evidences a pre-petition debt or whether Debtors currently owe any money to Creditor. Furthermore, the evidence submitted by Debtors does indicate that Debtors have an impound account and are current on their mortgage.

Furthermore, the Court deems failure to oppose to be consent to the relief requested pursuant to Local Rule 9013-1(h).

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Tentative Ruling

The Court is inclined to SUSTAIN the objection.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ruben Lopez

Represented By
Terrence Fantauzzi

Joint Debtor(s):

Jessica Lopez

Represented By
Terrence Fantauzzi

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17032 Anna C. Hopson and George E. Hopson

Chapter 13

#21.00 Motion to Avoid Junior Lien with The Bank Of New York Mellon fka The Bank Of New York Serviced By Specialized Loan Servicing LLC

Also #22

EH__

Docket 21

Tentative Ruling:

Hearing Date: 10/19/17

Summary of the Motion:

Notice: Proper

Opposition: None

Address: 34299 Lamborn St., Temecula, CA 92592

First trust deed: \$ 764,380.21 (HSBC Bank USA) (mortgage statement dated 7/18/17)

Second trust deed (to be avoided): \$ 190,305.34 (Bank of New York Mellon) (mortgage statement dated 7/27/17)

Fair market value (per appraisal & appraiser declaration): \$ 587,000

TENTATIVE

The Court has reviewed the motion and notice appearing proper and good cause appearing, the Court is inclined to GRANT the motion, AVOIDING the lien of Bank of New York Mellon conditioned upon Debtors obtaining a Chapter 13 discharge.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Anna C. Hopson

Represented By

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CONT... Anna C. Hopson and George E. Hopson

Chapter 13

Julie J Villalobos

Joint Debtor(s):

George E. Hopson

Represented By
Julie J Villalobos

Movant(s):

George E. Hopson

Represented By
Julie J Villalobos

Anna C. Hopson

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17032 Anna C. Hopson and George E. Hopson

Chapter 13

#22.00 CONT Confirmation of Chapter 13 Plan

From: 9/28/17

Also #21

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna C. Hopson

Represented By
Julie J Villalobos

Joint Debtor(s):

George E. Hopson

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17420 Jeffrey Elkins

Chapter 13

#23.00 Confirmation of Chapter 13 Plan

Also #24

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey Elkins

Represented By
Anthony P Cara

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17420 Jeffrey Elkins

Chapter 13

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

MOVANT: JEFFREY ELKINS

Also #23

EH__

Docket 19

Tentative Ruling:

10/19/2017

The Court will DENY the motion. 11 U.S.C. § 362(c)(3)(B) requires that the hearing be held within thirty days of the petition date. This hearing was scheduled forty-seven days after the hearing date, and, therefore, Debtor's request is legally prohibited.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jeffrey Elkins

Represented By
Anthony P Cara

Movant(s):

Jeffrey Elkins

Represented By
Anthony P Cara

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17456 Kathern Jennifer Toiney

Chapter 13

#25.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kathern Jennifer Toiney

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17469 Annette Culpepper

Chapter 13

#26.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Annette Culpepper

Represented By
Nathan Fransen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17507 Norma Hermosillo Hernandez

Chapter 13

#27.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 9/25/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Norma Hermosillo Hernandez Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

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6:17-17531 Harvey Everett Mosely and Jean Ann Mosely

Chapter 13

#28.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harvey Everett Mosely

Represented By
Paul Y Lee

Joint Debtor(s):

Jean Ann Mosely

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17533 Kevin William Dixon and Leticia Dixon

Chapter 13

#29.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kevin William Dixon

Represented By
Paul Y Lee

Joint Debtor(s):

Leticia Dixon

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17534 Shaun E Duncan and Danielle M Duncan

Chapter 13

#30.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shaun E Duncan

Represented By
Paul Y Lee

Joint Debtor(s):

Danielle M Duncan

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17548 Martha Viveros Rangel

Chapter 13

#31.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 9/26/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martha Viveros Rangel

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17575 Terry Neil Gaia and Tamara Marie Devalle-Gaia

Chapter 13

#32.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Terry Neil Gaia

Represented By
Edward G Topolski

Joint Debtor(s):

Tamara Marie Devalle-Gaia

Represented By
Edward G Topolski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17578 Kendra Susan Lewkow

Chapter 13

#33.00 Confirmation of Chapter 13 Plan

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Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kendra Susan Lewkow

Represented By
Morton J Grabel

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17579 Edgar Eduardo Diaz

Chapter 13

#34.00 Confirmation of Chapter 13 Plan

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Docket 0

*** VACATED *** REASON: CASE DISMISSED 9/29/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edgar Eduardo Diaz

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17609 Danny Howard Weeks

Chapter 13

#35.00 Confirmation of Chapter 13 Plan

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Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Danny Howard Weeks

Represented By
Stephen S Smyth

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17618 Raul R Robles

Chapter 13

#36.00 Confirmation of Chapter 13 Plan

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***** VACATED *** REASON: CASE DISMISSED 9/29/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raul R Robles

Represented By
Jose Perez

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17619 Judy Carmen Ortega

Chapter 13

#37.00 Motion For Sanctions/Disgorgement Notice Of Motion And Motion To Disgorge Compensation Pursuant To 11 U.S.C. § 329 And Federal Rule Of Bankruptcy Procedure 2017
CASE DISMISSED 9/19/17

Also #38

EH__

Docket 13

Tentative Ruling:

10/19/2017

BACKGROUND

On September 11, 2017, Judy Ortega ("Debtor") filed a Chapter 13 voluntary petition. The case was dismissed for failure to file case commencement documents on September 19, 2017.

On September 26, 2017, UST filed a motion to disgorge attorney's fees under 11 U.S.C. § 329. The motion is based on the failure to Debtor's counsel, Alon Darvish ("Counsel") to file the required statement of attorney compensation, which UST asserts that Counsel has regularly failed to do. On October 17, 2017, Counsel filed a disclosure of compensation.

DISCUSSION

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11 U.S.C. § 329 states:

- (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

Fed. R. Bankr. P. Rule 2016(b) states:

Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously discussed.

The Ninth Circuit has stated:

To facilitate the court's policing responsibilities, the Bankruptcy Code and Federal Rules of Bankruptcy Procedure impose several disclosure requirements on attorneys who seek to represent a debtor and who seek to recover fees. . . . Thus, failure to comply with the disclosure rules is a sanctionable violation, even if proper disclosure would have shown that the attorney had not actually violated any Bankruptcy Code provision or any Bankruptcy Rule.

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CONT... **Judy Carmen Ortega**

Chapter 13

In re Park-Helena Corp., 63 F.3d 877, 880 (9th Cir. 1995). Furthermore, "[T]he disclosure rules are applied literally, even if the results are sometimes harsh. Negligent or inadvertent omissions 'do not vitiate the failure to disclose.'" *Id.* at 881.

When an attorney fails to satisfy the disclosure requirements of § 329, the Court is authorized to order disgorgement of fees. *See, e.g., In re Lewis*, 113 F.3d 1040, 1045 (9th Cir. 1997) ("An attorney's failure to obey the disclosure and reporting requirements of the Bankruptcy Code and Rules gives the bankruptcy court the discretion to order disgorgement of attorney's fees. In reaching this conclusion, we do not mean to say that the excessiveness or reasonableness of those fees is irrelevant in all cases; in appropriate circumstances, a bankruptcy court should inquire into these subjects as part of deciding whether and to what extent to order disgorgement."); *see also In re Lee*, 1999 WL 61900 (9th Cir. 1999) ("An attorney's failure to obey the disclosure and reporting requirements of the Bankruptcy Code and Rules gives the bankruptcy court the discretion to order disgorgement of attorney's fees."). Here, UST states that Counsel has repeatedly violated the disclosure requirements in proceedings before this Court and, therefore, disgorgement is appropriate. Under 11 U.S.C. § 105 (a) (2010), the Court is empowered to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Therefore, the Court has the authority to issue an order directing disgorgement of fees and such an order is appropriate in this case.

Furthermore, the failure of Counsel to oppose may be deemed consent pursuant to Local Rule 9013-1(h).

TENTATIVE RULING

The Court is inclined to GRANT the motion, ordering disgorgement of the entirety of the fees paid by Debtor.

APPEARANCES REQUIRED.

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CONT... Judy Carmen Ortega

Chapter 13

Party Information

Debtor(s):

Judy Carmen Ortega

Represented By
Alon Darvish

Movant(s):

United States Trustee (RS)

Represented By
Mohammad Tehrani

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17619 Judy Carmen Ortega

Chapter 13

#38.00 Confirmation of Chapter 13 Plan

Also #37

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 9/19/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Judy Carmen Ortega

Represented By
Alon Darvish

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17644 Constantino Orea

Chapter 13

#39.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 10/2/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Constantino Orea

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-17689 Eugene Charles Harris

Chapter 13

#40.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 9/29/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eugene Charles Harris

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17715 Jorge Luis Luviano and Giovanna Toledo De Luviano

Chapter 13

#41.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jorge Luis Luviano

Represented By
James Geoffrey Beirne

Joint Debtor(s):

Giovanna Toledo De Luviano

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17757 Justin Lee Martin and Ashley Ann Martin

Chapter 13

#42.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Justin Lee Martin

Represented By
Todd L Turoci

Joint Debtor(s):

Ashley Ann Martin

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:33 PM

6:16-12158 Gustavo Valadez and Elizabeth Ann Valadez

Chapter 13

#43.00 Trustee's Motion to Dismiss Case

EH__

Docket 49

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/10/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gustavo Valadez

Represented By
Eliza Ghanooni

Joint Debtor(s):

Elizabeth Ann Valadez

Represented By
Eliza Ghanooni

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-18035 Jeanie Sullivan

Chapter 13

#44.00 Trustee's Motion to Dismiss Case

EH__

Docket 37

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeanie Sullivan

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:14-23150 Vivian Munson

Chapter 13

#45.00 Trustee's Motion to Dismiss Case

EH__

Docket 176

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vivian Munson

Represented By
Amanda G Billyard
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:15-19998 Jack C Pryor

Chapter 7

Adv#: 6:17-01050 United States Trustee for the Central District of v. Pryor

#1.00 Motion for Default Judgment

Also #2

EH__

Docket 34

Tentative Ruling:

10/23/17

BACKGROUND

On October 13, 2015, Jack Pryor ("Debtor") filed a Chapter 11 voluntary petition. On February 25, 2016, Debtor's case was converted to Chapter 7. The Court extended the time to file a complaint objecting to discharge on three occasions: (1) on June 8, 2016 (Dkt. No. 135); (2) on July 12, 2016 (Dkt. No. 141); and (3) on February 3, 2017 (Dkt. No. 245).

On February 28, 2017, UST filed a complaint against Debtor for denial of discharge pursuant to § 727(a)(6) and 727(a)(2)(B). On April 17, 2017, default was entered against Debtor. On July 3, 2017, Debtor filed a motion to set aside default. UST filed their opposition on July 12, 2017. On August 21, 2017, Debtor's motion was denied. On September 19, 2017, UST filed a motion for default judgment.

UST's complaint arises out of Debtor's removal of solar panels from certain real property located at 19024 Ruppert St., Palm Springs, CA (the "Property"). According to UST, the Chapter 7 trustee inspected the property on March 1, 2016, and identified

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CONT... Jack C Pryor

Chapter 7

approximately 96 solar panels affixed to the Property. In June 2016, Debtor notified Trustee that he had removed the solar panels. On October 19, 2016, after motion by the Trustee, the Court entered an order directing Debtor to turn over the solar panels. Debtor did not file opposition to the motion for turnover, and, after entry of the order, did not comply with the Court's order. On December 6, 2016, Trustee filed a motion for contempt, and, on December 15, 2016, the Court issued an order to show cause. Debtor did not respond to the order to show cause, and, on January 12, 2017, the Court entered an order holding Debtor in civil contempt.

DISCUSSION

A. Entry of Default

Fed. R. Civ. P. Rule 55 states that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." Fed. R. Civ. P. 55(a). Local Rule 7055-1 provides further requirements relating to a motion for entry of default judgment, and those requirements have been substantially satisfied here.

B. Motion for Default Judgment

1. Proper Service of Summons and Complaint

Fed. R. Bankr. P. Rule 7004(b)(1) states, in part:

[S]ervice may be made within the United States by first class mail postage prepaid as follows:

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- (1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

Here, Plaintiff properly served Debtor and his counsel at their addresses of record.

2. Merits of Plaintiff's claim

Upon default, the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true. *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987); *see also Almog v. Golden Summit Investors Group, Ltd.*, 2012 WL 12867972 at *4 (C.D. Cal. 2012) ("When reviewing a motion for default judgment, the Court must accept the well-pleaded allegations of the complaint relating to liability as true.").

Here, the complaint includes two causes of action: § 727(a)(2)(B) and § 727(a)(6)

Regarding § 727(a)(2)(B), that provision states:

- a) The court shall grant the debtor a discharge, unless –
 - (2) The debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed destroyed, mutilated, or

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concealed –

(B) property of the estate, after the date of the filing of the petition

Here, UST has asserted that the solar panels were property of the estate, that the solar panels were removed or sold by Debtor after the petition date, and that Debtor concealed his actions with the intent to hinder, delay, or defraud creditors or an officer of the estate. As such, UST has satisfied the elements of § 727(a)(2)(B).

Regarding § 727(a)(6), that provision states:

(a) The court shall grant the debtor a discharge, unless –

(6) the debtor has refused in the case –

Section 727(a)(6) contains three further disjunctive provisions, and UST has not cited a specific provision. Section 727(a)(6)(A) relates to the failure to a debtor to obey a lawful order of the court, and UST asserts that Debtor "refused to obey a lawful order of the court." Specifically, UST asserts that Debtor failed to comply with the Court's turnover order entered on October 19, 2016. This Court, in its order finding Debtor in civil contempt, has already held that Debtor willfully violated its Court order. Therefore, the elements of § 727(a)(6) have been satisfied.

3. Amount of Damages

Here, UST is not requesting any damages, and, therefore, no evidence is required

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CONT... **Jack C Pryor**
establishing the amount of damages.

Chapter 7

TENTATIVE RULING

The Court is inclined to GRANT the motion, DENYING Debtor a discharge.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jack C Pryor

Represented By
Trent Thompson

Defendant(s):

Jack C Pryor

Represented By
Linda J DeVore

Movant(s):

United States Trustee for the Central

Represented By
Everett L Green

Plaintiff(s):

United States Trustee for the Central

Represented By
Everett L Green

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Brandon J Iskander

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6:15-19998 Jack C Pryor

Chapter 7

Adv#: 6:17-01050 United States Trustee for the Central District of v. Pryor

#2.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01050. Complaint by United States Trustee for the Central District of California, Region 16 against Jack C Pryor. (Fee Not Required). with adversary cover sheet Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e)))

From: 5/3/17, 7/12/17, 7/26/17, 9/20/17

Also #1

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jack C Pryor

Represented By
Trent Thompson

Defendant(s):

Jack C Pryor

Represented By
Linda J DeVore

Plaintiff(s):

United States Trustee for the Central

Represented By
Everett L Green

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe

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CONT... Jack C Pryor

Brandon J Iskander

Chapter 7

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6:15-19998 Jack C Pryor

Chapter 7

#3.00 CONT Evidentiary hearing re OSC Why Debtor Should Not Be Held in Further Contempt and Be Bodily Detained Until Such Time as He Complies with Court Orders

From: 6/21/17, 8/28/17

EH__

Docket 263

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jack C Pryor

Represented By
Trent Thompson

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Brandon J Iskander

**United States Bankruptcy Court
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10:00 AM

6:17-18366 Kisha Eugena Stegall-Hill

Chapter 13

#1.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Personal Property

MOVANT: KISHA EUGENA STEGALL-HILL

EH__

Docket 8

Tentative Ruling:

10/24/2017

Service: Proper

Opposition: None

The Court is inclined to GRANT the motion, IMPOSING the automatic stay with regard to all creditors.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Kisha Eugena Stegall-Hill

Represented By
Christopher J Langley

Movant(s):

Kisha Eugena Stegall-Hill

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:17-18277 Lauren Nicole Pancucci

Chapter 13

#2.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 13446 Glorybower Street, Moreno Valley, CA 92553

MOVANT: MEI ZHAO

EH__

Docket 8

***** VACATED *** REASON: CASE DISMISSED 10/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lauren Nicole Pancucci

Pro Se

Movant(s):

MEI ZHAO

Represented By
Barry L O'Connor

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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10:00 AM

6:17-18212 Eugene Myers and Deborah Myers

Chapter 13

#3.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate ANY AND ALL PERSONAL AND REAL PROPERTY .

MOVANT: EUGENE AND DEBORAH MYERS

EH__

Docket 16

Tentative Ruling:

10/24/2017

Service: Proper

Opposition: None

The Court is inclined to GRANT the motion, CONTINUING the automatic stay with regard to all creditors except Welk Resort Group.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Eugene Myers

Represented By
Paul Y Lee

Joint Debtor(s):

Deborah Myers

Represented By
Paul Y Lee

Movant(s):

Deborah Myers

Represented By
Paul Y Lee

Eugene Myers

Represented By

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CONT... Eugene Myers and Deborah Myers

Chapter 13

Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18145 Amayda Vanessa Palomares

Chapter 13

#4.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate real property

MOVANT: AMAYDA VANESSA PALOMARES

EH__

Docket 10

***** VACATED *** REASON: CASE DISMISSED 10/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amayda Vanessa Palomares

Represented By
Timothy L McCandless

Movant(s):

Amayda Vanessa Palomares

Represented By
Timothy L McCandless
Timothy L McCandless

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18131 Ramon Gabriel Alvarez

Chapter 13

#5.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 2010 Toyota Prius

MOVANT: RAMON GABRIEL ALVAREZ

EH__

Docket 17

Tentative Ruling:

10/24/2017

Service: Improper

Opposition: None

The Court is inclined to DENY the motion. First, Debtor did not serve the motion on the affected creditor pursuant to Fed. R. Bankr. P. Rule 7004. Second, Debtor has not overcome the presumption of bad faith by "clear and convincing evidence." *See* 11 U.S.C. § 362(c)(3)(C). The evidence provided by Debtor regarding his current financial situation, and how this situation differs from that of his previous unsuccessful case, lacks detail and is not "clear and convincing."

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ramon Gabriel Alvarez

Represented By
Devin Sawdayi

Movant(s):

Ramon Gabriel Alvarez

Represented By
Devin Sawdayi

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CONT... Ramon Gabriel Alvarez

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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10:00 AM

6:17-18016 Timothy G Klepeis

Chapter 13

#6.00 Motion for relief from the automatic stay with supporting declarations
UNLAWFUL DETAINER RE: 3576 Mississippi Street San Diego CA 92104

MOVANT: HOLLYVALE RENTAL HOLDINGS LLC

CASE DISMISSED 10/23/17

EH__

Docket 7

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: None

DENY requests under ¶¶ 7 and 10 for lack of cause shown. DENY request under ¶ 8 –
Movant is not a creditor, nor has either requirement of § 362(d)(4) been met. DENY
requests under ¶¶ 1, 2, and 6 as MOOT because the case was dismissed on October
23, 2017.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Timothy G Klepeis Pro Se

Movant(s):

Hollyvale Rental Holdings, LLC Represented By
Sam Chandra

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

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6:17-17859 Sonia Garcia

Chapter 13

#7.00 Motion for relief from the automatic stay with supporting declarations
UNLAWFUL DETAINER RE: REAL PROPERTY 801 S. "J" St, San Bernardino
92410

MOVANT: DCCM INVESTMENT CORP

EH__

Docket 8

***** VACATED *** REASON: CASE DISMISSED 10/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sonia Garcia

Pro Se

Movant(s):

DCCM Investment Corp

Represented By
William E Windham

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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10:00 AM

6:17-17618 Raul R Robles

Chapter 13

#8.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 14117 San Gabriel Court, Rancho Cucamonga, CA 91739

MOVANT: WELLS FARGO BANK, N.A.

CASE DISMISSED 9/29/17

EH__

Docket 15

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d) (1) and (4) based on multiple recent bankruptcy filings affecting the property. The Court is inclined to GRANT requests under ¶¶ 2, 3, 10 and 12. DENY requests under ¶¶ 8 and 11 for lack of cause shown. DENY request under ¶ 14 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Raul R Robles

Represented By
Jose Perez

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Nancy L Lee

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CONT... Raul R Robles

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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10:00 AM

6:17-17539 Elpidio Berumen and Erika G. Berumen

Chapter 7

#9.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2008 HONDA ACCORD,, VIN
JHMCP26868C018058

MOVANT: TD AUTO FINANCE LLC

EH__

Docket 13

***** VACATED *** REASON: WITHDRAW OF MOTION FLD 10/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elpidio Berumen

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Erika G. Berumen

Represented By
Patricia M Ashcraft

Movant(s):

TD Auto Finance LLC

Represented By
Sheryl K Ith

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:17-17316 Luis Fernando Montoya, Jr.

Chapter 13

#10.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2016 NISSAN GT-R, VIN #
JN1AR5EF5GM290035

MOVANT: NISSAN MOTOR ACCEPTANCE CORPORATION

EH__

Docket 18

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: Yes

Parties to discuss adequate protection.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Luis Fernando Montoya Jr.

Represented By
Anthony B Vigil

Movant(s):

NISSAN MOTOR ACCEPTANCE

Represented By
Michael D Vanlochem

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Courtroom 303 Calendar**

Tuesday, October 24, 2017

Hearing Room 303

10:00 AM

6:17-16819 Al Rodriguez

Chapter 7

#11.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2017 HONDA ACCORD, VIN: JHMC R6F5 9HC0
09992

MOVANT: AMERICAN HONDA FINANCE CORPORATION

EH__

Docket 10

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d) (1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Al Rodriguez

Represented By
Freddie V Vega

Movant(s):

AMERICAN HONDA FINANCE

Represented By
Vincent V Frounjian

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 24, 2017

Hearing Room 303

10:00 AM

6:17-16669 Kalenga Patrick Munongo and Janelle Nicole Munongo

Chapter 13

#12.00 Motion in Individual Case for Order Confirming Termination of Stay under 11 U.S.C. 362(j) or That No Stay is in Effect under 11 U.S.C. 362(c)(4)(A)(ii) 851 Via Concepcion, Riverside, CA 92506-3634

MOVANT: CITIMORTGAGE INC

EH__

Docket 34

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: None

Debtors had a previous bankruptcy case dismissed on June 8, 2017, for failure to make plan payments. The instant case was filed on August 9, 2017. On August 16, 2017, Debtors filed a motion for an order continuing the automatic stay, and, at a hearing on August 31, 2017, the Court orally denied the motion.

11 U.S.C. § 362(c)(3) provides that if a debtor had a previous case dismissed within a year of the instant case, then, absent court order, the automatic stay terminates thirty days after the petition date. Here, the Court did not continue the automatic stay, and, therefore, the automatic stay terminated on September 8, 2017. Therefore, the Court is inclined to GRANT the motion, confirming that the automatic stay is not in effect.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

**United States Bankruptcy Court
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CONT... Kalenga Patrick Munongo and Janelle Nicole Munongo

Chapter 13

Debtor(s):

Kalenga Patrick Munongo

Represented By
Paul Y Lee

Joint Debtor(s):

Janelle Nicole Munongo

Represented By
Paul Y Lee

Movant(s):

CitiMortgage, Inc.

Represented By
Robert P Zahradka

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

Rod (MJ) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, October 24, 2017

Hearing Room 303

10:00 AM

6:17-16316 Claudia Acevedo

Chapter 7

#13.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2403 Milano Terrace, Chino Hills, CA 91709

MOVANT: U.S. BANK TRUST, N.A.

EH__

Docket 19

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d) (1) and (2). GRANT relief from the automatic stay pursuant to § 362(d)(4) based on multiple recent bankruptcy cases affecting the property, multiple recent unauthorized transfers, and the fact that Debtor received the property through an unauthorized warranty deed three days before filing the instant bankruptcy case. GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Claudia Acevedo

Represented By
Richard McAndrew

Movant(s):

U.S. Bank Trust, N.A., as Trustee

Represented By
Christina J O

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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CONT... Claudia Acevedo

Chapter 7

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 24, 2017

Hearing Room 303

10:00 AM

6:17-16255 Chad Priest Construction, Inc.,

Chapter 7

#14.00 Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Douglas and Deanna Pearson v. Dan Catuna, etc. Docket no. CIVDS1620650 San Bernardino Superior Court Justice Center

MOVANT: DOUGLAS AND DEANNA PEARSON

EH__

Docket 19

Tentative Ruling:

10/24/2017

Service is Improper
Opposition: None

The Court is inclined to DENY the motion. Movant did not serve the motion on the Chapter 7 Trustee, the United States Trustee, or the Debtor pursuant to Local Rule 4001-(1)(c)(1)(C). Furthermore, Movant's attorney's declaration requests annulment of the automatic stay to validate certain post-petition acts, however, there is no description of what acts were taken in violation of the automatic stay. Finally, the details of the state court action are unclear. Specifically, it is not clear what role Debtor has in the litigation, and, while Movant appears to wish to proceed against applicable insurance, the motion also seems to indicate that it is unclear whether there is any applicable insurance.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Chad Priest Construction, Inc.,

Represented By
Jonathan R Preston

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Central District of California
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Judge Mark Houle, Presiding
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CONT... Chad Priest Construction, Inc.,

Chapter 7

Movant(s):

Douglas Pearson

Represented By
Alan J Carnegie

Deanna Pearson

Represented By
Alan J Carnegie

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, October 24, 2017

Hearing Room 303

10:00 AM

6:17-16114 Allan Omar Ramos

Chapter 13

#15.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: (2013 CHEVROLET CRUZE Vin # 1G1PA5SG1D7285493)

MOVANT: ALLY BANK

EH__

Docket 21

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Allan Omar Ramos

Represented By
Julie J Villalobos

Movant(s):

Ally Bank

Represented By
Adam N Barasch

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 24, 2017

Hearing Room 303

10:00 AM

6:17-15978 Conchita C Ang

Chapter 13

#16.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2150 Horse Trail Dr, Redlands, California 92373-6977 with Proof of Service

MOVANT: WELLS FARGO BANK, N.A.

CASE DISMISSED 8/31/17

EH__

Docket 31

Tentative Ruling:

10/24/2017

On July 18, 2017, Conchita Ang ("Debtor") filed a Chapter 13 voluntary petition. Debtor had a previous bankruptcy case dismissed on October 12, 2016. As such, pursuant to § 362(c)(3), the automatic stay was to terminate thirty days after the petition absent an order from the Court.

On August 15 and 18, respectively, Debtor filed an "application for legal determination/clarification of automatic stay" (the "Application") and a motion to, in part, enforce the automatic stay (the "Enforcement Motion"). On August 31, 2017, Debtor's case was dismissed with a six-month refiling bar. On September 14, 2017, Debtor's Application was denied, and the Court continued the Enforcement Motion.

On September 22, 2017, Wells Fargo Bank filed a motion for relief from the automatic stay (the "Annulment Motion"), requesting, in part, retroactive annulment of the automatic stay. Because Wells Fargo's motion was filed after the case was dismissed, the Court deems all Wells Fargo's requests that are not retroactive in

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CONT... Conchita C Ang

Chapter 13

nature to be moot. On October 10, 2017, Debtor filed her opposition to the Annulment Motion.

11 U.S.C. § 362(d) states:

(d) On 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 such as by terminating, *annulling*, modifying, or condition such stay –

(emphasis added); *see also In re Schwartz*, 954 F.2d 569, 573 (9th Cir. 1992) ("If a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay, and whether violations of the stay are void or voidable is not at issue.").

The BAP, in *In re Fjeldsted*, noted the absence of a clear standard for annulment of the automatic stay. 293 B.R. 12, 21 (B.A.P. 9th Cir. 2003) ("There is less appellate clarity, however, in enunciating a test for retroactive stay relief. Inconsistent standards have thus developed, which run the gamut from such relief being justified only in 'extreme circumstances' to giving the court 'wide latitude' to 'balance the equities' on a case-by-case basis."). The BAP's most recent announcement of the standard for annulment of the automatic stay stated the following:

Determining whether cause exists to annul the stay is a case-by-case inquiry based on a balance of the equities. In conducting this inquiry the bankruptcy court, among other factors, should consider whether the creditor knew of the bankruptcy when violating the stay and whether the debtor's conduct was unreasonable, inequitable or prejudicial to the creditor.

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CONT... Conchita C Ang

Chapter 13

In *Fjeldsted*, we approved additional factors for consideration in assessing the equities. The twelve nonexclusive factors are: (1) number of filings; (2) whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors; (3) a weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser; (4) the debtor's overall good faith (totality of circumstances test); (5) whether creditors knew of stay but nonetheless took action, thus compounding the problem; (6) whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules; (7) the relative ease of restoring parties to the status quo ante; (8) the costs of annulment to debtors and creditors; (9) how quickly creditors moved for annulment, or how quickly debtor moved to set aside the sale or violative conduct; (10) whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief; (11) whether annulment of the stay will cause irreparable injury to the debtor; and (12) whether stay relief will promote judicial economy or other efficiencies. The Panel in *Fjeldsted* cautioned that the twelve factors are merely a framework for analysis and not a scorecard, and that in any given case, one factor may so outweigh the others as to be dispositive.

In re Estavan Capital LLC, 2015 WL 7758494 at *5 (B.A.P. 9th Cir. 2015) (citations and quotations omitted).

While *Fjeldsted* cautioned that the enumerated factors are not a scorecard, it is clear that the majority of the factors, including, in particular, Debtor's lack of good faith, weigh in favor of annulling the stay. Specifically, as is noted by Wells Fargo, this is the sixteenth bankruptcy affecting the property, and this is also the tenth bankruptcy filed by Debtor. Debtor commenced the instant bankruptcy case several minutes before a scheduled foreclosure sale. And Debtor's bankruptcy case was dismissed at the confirmation hearing, with a re-filing bar, after Debtor failed to satisfy her basic obligations as a debtor.

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CONT... Conchita C Ang

Chapter 13

Furthermore, there is no evidence that Wells Fargo was aware of the bankruptcy filing at the time it undertook the acts in question, nor is there any evidence that Wells Fargo violated the automatic stay once it learned of the filing. Furthermore, Wells Fargo has at least a colorable argument that the automatic stay was not effective in this case. Certainly, if Wells Fargo had not made an error in the location in which it recorded a previous *in rem* order granting relief from the automatic stay, there would have been no need to seek annulment.

Given the history of Debtor's bankruptcy filings, the history of filings affecting the property, the timing of the filing in this case, Debtor's non-fulfillment of her legal obligations, the absence of timely notice of the bankruptcy filing to Wells Fargo, Wells Fargo's previous obtainment of an *in rem* order and recording (albeit incorrectly) of that order, Wells Fargo's prompt action in seeking annulment of the automatic stay, and Debtor's overall bad faith, the Court is inclined to GRANT the motion, annulling the automatic stay.

Because Wells Fargo filed its motion after dismissal of the instant bankruptcy case, all requests other than retroactive § 362(d)(1) relief are DENIED as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Conchita C Ang

Represented By
Richard W Snyder

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Jonathan C Cahill

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CONT... Conchita C Ang

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, October 24, 2017

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10:00 AM

6:17-14868 Lawrence D Leavingston, Sr.

Chapter 13

#17.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2010 Volkswagen Jetta.

MOVANT: AMERICREDIT FINANCIAL SERVICES

EH__

Docket 22

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT relief from 1301(a) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Lawrence D Leavingston Sr.

Represented By
Gilbert A Diaz

Movant(s):

AmeriCredit Financial Services, Inc.

Represented By
Mandy D Youngblood
Sheryl K Ith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:17-14359 Lashanda Moniek Shelton

Chapter 13

#18.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1173 South Cactus Avenue, #1, Rialto, CA 92376

MOVANT: THE BANK OF NEW YORK MELLON

EH__

Docket 22

Tentative Ruling:

10/24/2017

Service is Proper

Opposition: Yes

Subject to cure by Debtor or adequate protection discussions, the Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under § 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Lashanda Moniek Shelton

Represented By
Lionel E Giron
Kevin Tang

Movant(s):

The Bank of New York Mellon FKA

Represented By
Robert P Zahradka

**United States Bankruptcy Court
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CONT... Lashanda Moniek Shelton

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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

6:17-13853 Malik Muhammad Asif and Zobia Asif

Chapter 7

#19.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2618 Stagecoach Trail, Chino Hills, CA 91709

MOVANT: CITIMORTGAGE, INC.

EH____

Docket 118

Tentative Ruling:

10/24/2017

Service is Proper

Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Malik Muhammad Asif

Represented By
Todd L Turoci

Joint Debtor(s):

Zobia Asif

Represented By
Todd L Turoci

Movant(s):

CitiMortgage, Inc.

Represented By

**United States Bankruptcy Court
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10:00 AM

CONT... Malik Muhammad Asif and Zobia Asif

Chapter 7

Robert P Zahradka

Trustee(s):

Arturo Cisneros (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
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Tuesday, October 24, 2017

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10:00 AM

6:17-12977 Ellen R. Kennedy

Chapter 7

#20.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3152 & 3154 Jackson Ave, City of Rosemead, CA 91770

MOVANT: U.S. BANK TRUST, N.A.

EH__

Docket 18

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (4) based on an unauthorized, unrecorded grant deed transferring the property to Debtor.. GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 5.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ellen R. Kennedy

Represented By
Patricia M Ashcraft

Movant(s):

U.S. Bank Trust, N.A., As Trustee

Represented By
Darlene C Vigil

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, October 24, 2017

Hearing Room 303

10:00 AM

6:17-12649 Toni N. Ephraim

Chapter 13

#21.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 2496 N Mountain View Ave San Bernardino CA 92405-
3526

MOVANT: LAKEVIEW LOAN SERVICING LLC

From: 9/26/17

EH__

Docket 26

***** VACATED *** REASON: ORDER ENTERED 10/23/17**

Tentative Ruling:

09/26/2017
Service: Proper
Opposition: Yes

Court's tentative ruling is to GRANT relief from the stay under § 362(d)(1). GRANT
waiver of 4001(a)(3) stay and relief requested under ¶3.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Toni N. Ephraim

Represented By
Paul Y Lee

Movant(s):

Lakeview Loan Servicing LLC

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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

6:17-12451 Javier Ruiz Olivas and Gloria Olguin

Chapter 7

#22.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 2596 Rorimer Drive, Riverside, CA .

MOVANT: INTERESTED PARTY ALAN GATTO

EH__

Docket 36

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: None

The Court is inclined to CONTINUE the matter for Movant to file a supplemental declaration. Specifically, while Movant has checked the appropriate box stating that post-petition acts taken in violation of the automatic stay were taken before Movant knew of the bankruptcy filing, there is no supplemental declaration explaining when and how Movant obtained knowledge of the bankruptcy filing. Section 12 of the form motion explicitly contemplates the inclusion of a supplemental declaration when filing a motion to annul the automatic stay.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Javier Ruiz Olivas

Represented By
Aldo A Flores

Joint Debtor(s):

Gloria Olguin

Represented By
Aldo A Flores

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10:00 AM

CONT... Javier Ruiz Olivas and Gloria Olguin

Chapter 7

Movant(s):

Alan Gatto

Represented By
Helen G Long

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:17-11670 AMANDO MORALES and ALICIA MALDONADO

Chapter 7

#23.00 CONT Motion for relief from automatic stay with supporting declarations
ACTION IN NON-BANKRUPTCY FORUM RE: Real Property

MOVANT: MARTHA E GUERRERO AND EDUARDO E GUERRERO

FROM: 4/25/17, 5/30/17, 7/11/17, 7/25/17, 8/22/17

EH__

Docket 11

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/20/17

Tentative Ruling:

5/30/17

Debtor's opposition argues that the real estate contract is an executory contract that can be rejected in bankruptcy. While providing an applicable citation for that assertion, Debtor does not apply the legal standard to the facts of this case.

Nevertheless, it appears that Debtor's characterization of the contract as "executory" may have merit. While Movant, in the motion, states that "all contingencies had been removed," and, in the reply, states that they "dutifully removed all their contractual contingencies," the state court complaint submitted to support their motion states, in paragraph 23: "Plaintiffs have fully performed all conditions, covenants, and promises required by them on their part to be performed in accordance with the terms and conditions of the contract, *except* the final payment for the purchase of the Property." (emphasis added). While Movants appear to have made the initial deposit into escrow, it does not appear that the final purchase price was tendered.

"[A]n 'executory contract' that can be rejected in bankruptcy is a contract on which performance remains due on both sides at the time of the bankruptcy petition." *Matter of Newcomb*, 744 F.2d 621, 624 (8th Cir. 1984); *see also In re Texscan Corp.*, 976 F.2d 1269-1271-72 (9th Cir. 1992). In *Newcomb*, the Court held that when the funds had already been transferred into escrow, there was no executory contract – no

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CONT... **AMANDO MORALES and ALICIA MALDONADO**

Chapter 7

material obligations remained on the part of the grantor. *See id.*

In the Ninth Circuit, a real estate sales contract remains executory until the full purchase price is deposited into escrow by the purchaser. *See In re Hertz*, 536 B.R. 434, 439-41 (Bankr. C.D. Cal. 2015) (an extended discussion on when a purchase contract loses its executory nature).

Given that the real estate purchase contract may be an executory contract that shortly will be rejected by operation of law under 11 U.S.C. § 365(d)(1), and that Movants are seeking a state court order for specific performance under the contract, granting relief from stay would be improper because the state court proceedings would interfere with the bankruptcy court proceedings. Interference with the administration of the estate is the most important consideration when considering a motion for relief from stay to proceed with state court litigation. *See In re Roger*, 539 B.R. 837, 845 C.D. Cal. 2015) ("According to the court in *Curtis*, the most importance factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate. Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit."). Here, there is a possibility of significant interference with the bankruptcy estate.

Tentative Ruling:

For the foregoing reasons, the Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

AMANDO MORALES

Represented By
William D Gurney

Joint Debtor(s):

ALICIA MALDONADO JIMENEZ

Represented By
William D Gurney

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CONT... AMANDO MORALES and ALICIA MALDONADO

Chapter 7

Movant(s):

Eduardo E. Guerrero

Represented By
Christopher J Langley

Trustee(s):

Charles W Daff (TR)

Represented By
Brandon J Iskander
Lynda T Bui

**United States Bankruptcy Court
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10:00 AM

6:17-11513 Daniel Reyes

Chapter 13

#24.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2009 Cadillac, Escalade VIN 1GYFC53209R123456

MOVANT: ALASKA USA FEDERAL CREDIT UNION

EH__

Docket 26

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Daniel Reyes

Represented By
Rebecca Tomilowitz

Movant(s):

Alaska USA Federal Credit Union

Represented By
Cassandra J Richey

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:17-11335 Brian Scott Bunnell and Wendi Lynn Bunnell

Chapter 13

#25.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 HONDA CRF450R, VIN: JH2P E053 4FK4 02594

MOVANT: AMERICAN HONDA FINANCE CORPORATION

EH__

Docket 34

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Brian Scott Bunnell

Represented By
Todd L Turoci

Joint Debtor(s):

Wendi Lynn Bunnell

Represented By
Todd L Turoci

Movant(s):

AMERICAN HONDA FINANCE

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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10:00 AM

CONT...

Brian Scott Bunnell and Wendi Lynn Bunnell

Vincent V Frounjian

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, October 24, 2017

Hearing Room 303

10:00 AM

6:17-10088 Beatriz Esqueda

Chapter 13

#26.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Chrysler 200 LX

MOVANT: CONSUMER PORTFOLIO SERVICES, INC.

From: 9/19/17, 10/3/17

EH__

Docket 36

Tentative Ruling:

9/19/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Beatriz Esqueda

Represented By
Rebecca Tomilowitz

Movant(s):

Consumer Portfolio Services, Inc.

Represented By
Ryan M Davies

**United States Bankruptcy Court
Central District of California
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CONT... Beatriz Esqueda

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, October 24, 2017

Hearing Room 303

10:00 AM

6:16-21232 Alejandro Salinas, Jr.

Chapter 13

#27.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 6386 Stable Falls Avenue, Rancho Cucamonga, California 91739

MOVANT: PACIFIC COMMUNITY CREDIT UNION

From: 9/26/17, 10/3/17

EH__

Docket 45

Tentative Ruling:

09/26/2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
GRANT ¶¶ 3 and 12. Request for APO DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Alejandro Salinas Jr.

Represented By
Nicholas M Wajda

Movant(s):

PACIFIC COMMUNITY CREDIT

Represented By
Nichole Glowin

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:16-21213 Bartholemew James Ratner and Pamela J Armijo-Ratner

Chapter 13

#28.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11252 Dandelion Ln, Apple Valley, CA 92308

MOVANT: SETERUS, INC.

EH__

Docket 45

Tentative Ruling:

10/24/2017

Service is Proper

Opposition: Yes

Debtors had two bankruptcy cases dismissed in the year prior to filing the instant case. The first case was dismissed on July 25, 2016, for failure to make plan payments. The second case was dismissed on October 24, 2016, for failure to file information.

11 U.S.C. § 362(c)(4)(A)(ii) provides that if a debtor had two previous cases dismissed within a year of the instant case, then, absent court order, the automatic stay does not go into effect. Here, the Court did not impose the automatic stay, and, therefore, the automatic stay was never effective in this case. Therefore, the Court is inclined to GRANT the motion, confirming that the automatic stay is not in effect.

APPEARANCES REQUIRED.

Party Information

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CONT... Bartholemew James Ratner and Pamela J Armijo-Ratner

Chapter 13

Debtor(s):

Bartholemew James Ratner

Represented By
H Christopher Coburn

Joint Debtor(s):

Pamela J Armijo-Ratner

Represented By
H Christopher Coburn

Movant(s):

SETERUS, INC. as the authorized

Represented By
James F Lewin

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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10:00 AM

6:16-19094 Eric S Kim

Chapter 7

#29.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 5064 Glenview Street, Chino Hills, CA 91709

MOVANT: BANK OF AMERICA, N.A.

EH__

Docket 52

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Eric S Kim

Represented By
David L Speckman

Movant(s):

Bank of America, N.A.

Represented By
Christina J O

Trustee(s):

Howard B Grobstein (TR)

Represented By
Reem J Bello

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6:16-18035 Jeanie Sullivan

Chapter 13

#30.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 42790 May Pen Road, Bermuda Dunes, California 92203

MOVANT: CIT BANK, N.A.

EH__

Docket 38

Tentative Ruling:

10/24/2017

Service is Proper

Opposition: Yes

Parties to discuss adequate protection terms.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jeanie Sullivan

Represented By
Christopher Hewitt

Movant(s):

CIT BANK, N.A.

Represented By
Alexander K Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, October 24, 2017

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10:00 AM

6:15-21418 James Lloyd Walker

Chapter 7

#31.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 26492 Bluewater Road, Helendale, CA 92342

MOVANT: BAYVIEW LOAN SERVICING, LLC

EH__

Docket 93

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

James Lloyd Walker

Pro Se

Movant(s):

BAYVIEW LOAN SERVICING,

Represented By
Edward G Schloss

Trustee(s):

Robert Whitmore (TR)

Represented By
Franklin C Adams

**United States Bankruptcy Court
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6:15-14501 Vonetta M Mays

Chapter 13

#32.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1325 Brentwood Cir #D Corona, CA 92882

MOVANT: WELLS FARGO BANK

EH__

Docket 159

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: Yes

The evidence presented by Debtor does not controvert the evidence presented by Movant, nor does Debtor contest that she is in default. Nor does Debtor provide evidence of value to establish an equity cushion. Subject to adequate protection discussions, the Court is inclined to GRANT the motion under § 362(d)(1) and as otherwise requested.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Vonetta M Mays

Represented By
Christopher J Langley

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Alexander K Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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

6:13-30641 Jacob J Cannon and Danielle M Cannon

Chapter 13

#33.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 761 Glendenning Way, San Bernardino, CA 92404

MOVANT: NATIONSTAR MORTGAGE LLC

EH__

Docket 86

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: Limited

Subject to discuss from the parties regarding an adequate protection order, the Court is inclined to GRANT relief from stay pursuant to § 362(d)(1). GRANT waiver of 4001 (a)(3) stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under ¶ 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jacob J Cannon

Represented By
Lisa H Robinson
John F Brady

Joint Debtor(s):

Danielle M Cannon

Represented By
Lisa H Robinson

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CONT... Jacob J Cannon and Danielle M Cannon

Chapter 13

John F Brady

Movant(s):

NATIONSTAR MORTGAGE LLC

Represented By
Andrew Kussmaul
Alexander K Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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2:00 PM

6:17-11053 Rio Rancho Super Mall LLC

Chapter 11

#34.00 Motion to Extend Time to File Direct Testimony in Support of Evidentiary Hearing on Debtor's Motion to Value Real Property

EH__

Docket 103

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

Movant(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

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6:16-14273 Allied Injury Management, Inc.

Chapter 11

#35.00 Motion for Turnover of Property of the Estate

EH__

Docket 303

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn
Steven Werth

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn
Steven Werth

**United States Bankruptcy Court
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Hearing Room 303

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6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

Adv#: 6:17-01059 ASR Constructors Inc a California Corporation et a v. Gotte Electric, Inc. et

#36.00 CONT Motion for Order Authorizing Deposit of Disputed Funds and Granting Related Interpleader Relief

From: 5/30/17, 6/19/17, 7/24/17, 9/26/17

Also #37

EH__

Docket 37

Tentative Ruling:

6/19/17

PROCEDURAL BACKGROUND

On September 20, 2013, ASR Constructors, Inc. ("Debtor") filed a Chapter 11 voluntary petition. On October 23, 2013, related entities Another Meridian Company, LLC ("Meridian") and Inland Machinery, Inc. ("Inland") (collectively, "Debtors") filed Chapter 11 voluntary petitions. On November 1, 2013, the Court ordered joint administration of the estates of Debtor, Meridian and Inland.

Prior to the filing of the bankruptcy petition, Gotte Electric, Inc. ("Gotte") filed a state court complaint against Debtors and Federal Insurance Company ("FIC") to set aside a fraudulent transfer. Upon Debtor's filing of a Chapter 11 petition, the action was removed to the bankruptcy court.

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CONT... ASR Constructors Inc a California Corporation

Chapter 11

On November 17, 2015, Debtors filed a motion to approve compromise. On November 24, 2015, UST filed an objection. On December 1, 2015, Insurance Company of the West ("ICW") filed an objection. After further briefing, the Court granted the motion to approve the compromise, and an order was entered approving the compromise on December 30, 2015.

On January 8, 2016, Debtors' bankruptcy cases were dismissed. On February 13, 2017, Debtors' bankruptcy cases were reopened. On March 14, 2017, upon request by Debtors the Court modified the seventh paragraph of its dismissal order as follows:

7. ~~Except for the claims asserted in the declaratory relief action filed by ICW and/or Gotte pursuant to the Settlement Agreement,~~ this Court shall retain exclusive jurisdiction to enforce the provisions of the Settlement Agreement, 9019 Order and this Dismissal Order and to resolve any dispute(s) concerning the Settlement Agreement, the 9019 Order and/or this Dismissal Order or the rights and duties of the parties hereunder or thereunder or any issues relating to the Settlement Agreement, the 9019 Order and/or this Dismissal Order, including, interpretation of the terms, conditions and provisions thereof, and all issues and disputes arising in connection with the relief authorized under Settlement Agreement, the 9019 Order and/or this Dismissal Order.

On March 17, 2017, Debtors filed a complaint in interpleader against Gotte and other parties. On May 8, 2017, Debtors filed a motion for authorization to deposit disputed funds and for interpleader relief. At a status conference on May 16, 2017, the Court expressed some concerns with the relief requested, and Debtors filed a modification to motion on June 5, 2017.

FACTUAL BACKGROUND

Debtor was a general contractor. In connection with Debtor's work, FIC issues a number of surety performance and payment bonds on Debtor's behalf. Debtors and

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their principals, in return, executed various indemnity and collateral agreements in favor of FIC.

Gotte was Debtor's sub-contractor on three projects. On May 28, 2013, Gotte obtained a state court judgment against Debtor in the amount of \$6,655,486.47, and on July 1, 2013, Gotte filed a UCC judgment lien against Debtor. On February 1, 2010, while the state court litigation was pending, Debtor transferred certain real property (the "Meridian Property") to Meridian for \$3,100,000 and certain equipment and machinery (the "Equipment") to Inland for \$3,780,458. These transfers were the subject the of the fraudulent transfer action commenced by Gotte. FIC has a lien on the Meridian Property, the Equipment, and Debtor's accounts receivable.

On December 17, 2013, the Court authorized the sale of that part of the Meridian Property located in the city of Riverside for a purchase price of \$3,150,000. Net proceeds of the sale, totaling \$1,790,000 were held in a DIP account, subject to the claims of Gotte, FIC, Berkley Regional Insurance Company ("BRIC") and ICW. Additionally, net proceeds of the sale of certain real property located in Phelan, totaling \$50,000, were held in a DIP account subject to the claims of FIC and BRIC, and net proceeds of an auction sale of the Equipment, totaling \$1,006,000, were held in a DIP account subject to the lien of FIC. The total amount of funds on hand at the time of the filing of the compromise motion was \$3,152,360.28.

As part of the compromise motion, FIC agreed to grant a carve-out from its collateral in the amount of \$200,000 plus 45% of net proceeds from the sale of the remainder of the Meridian Property. The various parties' respective rights to the FIC carve-out were not determined by the compromise motion.

On December 24, 2015, ICW filed a complaint in state court for declaratory relief and interpleader. On February 9, 2016, the IRS filed a notice of removal, removing the case to federal district court. On May 24, 2016, the district court dismissed the case upon motion of the IRS for lack of subject matter jurisdiction. As such, it is not clear that the interpleader action can be heard in either state court or federal district court.

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Chapter 11

DISCUSSION

Debtors request two categories of relief: (1) authority to deposit the funds constituting the FIC carve-out (the "Funds") into the court registry; and (2) various interpleader relief.

I. Deposit of Funds in Court Registry

Fed. R. Bankr. P. Rule 7067 incorporates Fed. R. Civ. P. Rule 67. FRCP Rule 67(a) states:

If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party – on notice to every other party and by leave of court – may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

FRCP Rule 67 is properly invoked when there is a live dispute regarding the entitlement to the funds in question. *See generally Alstom Caribe, Inc. v. George P. Reintjes Co., Inc.*, 484 F.3d 106, 113 (1st Cir. 2007) ("The core purpose of Rule 67 is to relieve a party who holds a contested fund from responsibility for disbursement of that fund among those claiming some entitlement thereto."); *see also Garrick v. Weaver*, 888 F.2d 687, 694 (10th Cir. 1989) ("The language of Rule 67 leaves to the discretion of the district court the decision as to whether to permit the deposit of funds in court. . . . The magistrate acted well within his discretionary authority in allowing the funds to be paid into court and excusing the defendants. His decision both ensured that the settlement fund would be available for disbursement and facilitated judicial

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economy by permitting the defendants, who no longer had an interest in the funds or in these proceedings, to withdraw.").

Here, there is clearly a live dispute regarding entitlement to the Funds.

II. Interpleader Relief

Debtors' original motion requested that the Court grant the following five forms of relief: (1) discharge Debtors from further liability to the named defendants; (2) dismissal of Debtors, with prejudice, from the adversary; (3) entry of a permanent injunction preventing Defendants from asserting claims against Debtor relating to the settlement funds; (4) requiring the named defendants to litigate between themselves; (5) an award of costs and reasonable attorney fees. Debtors' modification to the motion withdrew the last request, and modified the second request to reduce Debtors' role in the action to that of a monitoring capacity.

"In an interpleader action, the 'stakeholder' of a sum of money sues all those who might have claim to the money, deposits the money with the district court, and lets the claimants litigate who is entitled to the money." *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1265 (9th Cir. 1992). Procedurally,

An interpleader action typically involves two stages. In the first stage, the district court decides whether the requirements for rule or statutory interpleader action have been met by determining if there is a single fund at issue and whether there are adverse claimants to that fund. If the district court finds that the interpleader action has been properly brought the district court will then make a determination of the respective rights of the claimants.

Rhoades v. Casey, 196 F.3d 592, 600 (5th Cir. 1999) (citations omitted).

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Here, Debtors are relying on rule interpleader. Fed. R. Civ. P. Rule 22(a)(1), incorporated into bankruptcy proceedings by Fed. R. Bankr. P. Rule 7022(a), states:

- (1) **By a Plaintiff.** Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:
 - (A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or
 - (B) the plaintiff denies liability in whole or in part to any or all of the claimants.

Here, the various defendants' actual or potential claims to the Funds may expose Debtors to multiple liability. Therefore, an interpleader action is appropriate.

In cases where an interpleader action is appropriate, *Collier* states the following:

By turning over the fund or the property as directed by the court, the plaintiff may be discharged from the proceeding and any further liability. There may be an injunction issued to prevent the adverse claimants from further pursuing the stakeholder. On a finding that interpleader is proper, the court will then enter an order requiring the claimants to the fund or property to interplead.

10 *Collier on Bankruptcy* ¶ 7022.01 (16th ed. 2013); *see also* 28 U.S.C. § 2361. Here, Debtors' requests closely track the language identified in *Collier's* and, in the absence of opposition, appear appropriate here.

III. Jurisdictional Statement

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Chapter 11

A. Bankruptcy Court Jurisdiction

Nevertheless, the Court must determine whether it has subject matter jurisdiction. *See, e.g., In re Strawberry*, 464 B.R. 443, 447 (Bankr. N.D. Fla. 2012). This complaint in interpleader was filed in a dismissed bankruptcy case and would result in litigation over non-bankruptcy claims between non-debtor parties.

28 U.S.C. § 157 provides for four categories of cases which the district court may refer to the bankruptcy court: (1) cases under title 11; (2) proceedings arising under title 11; (3) proceedings arising in a case under title 11; and (4) proceedings related to a case under title 11. *See, e.g., In re S&M Constructors, Inc.*, 144 B.R. 855, 858 (Bankr. W.D. Mo. 1992). Additionally, 28 U.S.C. § 157(b) divides matters into core and non-core proceedings.

The first category, cases under title 11, refers to the bankruptcy case commenced by the filing of the petition. *See, e.g., In re Wood*, 825 F.2d 90, 92 (5th Cir. 1987). This category is inapplicable here, as the matter at issue is a complaint in interpleader.

The second category, proceedings arising under title 11, refers to those actions that are expressly created by title 11. *See, e.g., In re Wolverine Radio Co., Inc.*, 930 F.2d 1132, 1141, n.14 (6th Cir. 1991). This category is inapplicable here – the underlying liability is premised upon state law claims.

The third category¹, proceedings arising in a case under title 11, refers to claims that, although not created by title 11, would have no existence absent the bankruptcy, such as administrative matters. *See, e.g., In re Repository Techs., Inc.*, 601 F.3d 710, 719 (7th Cir. 2010). This category is inapplicable here.

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The fourth category, proceedings related to a case under title 11, contains two different subsets: (1) causes of action owned by the debtor that become property of the estate under § 541; and (2) suits between third parties which in one way or another affect the administration of the bankruptcy case. *Id.* It is only the latter category that is potentially invoked by this proceeding.

The primary test for related to jurisdiction is the Third Circuit's *Pacor* test:

The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.* Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action . . . and which in any way impacts upon the handling and administration of the bankrupt estate.

Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984). The Supreme Court previously acknowledged the prevalence of the *Pacor* test:

In attempting to strike an appropriate balance, the Third Circuit in *Pacor, Inc. v. Higgins*, 743 F.2d 984 (1984), devised the following test for determining the existence of "related to" jurisdiction:

[Excerpt quoted above] . . .

The First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits have adopted the *Pacor* test with little or no variation. The Second and Seventh Circuits, on the other hand, seem to have adopted a slightly different test. But whatever test is used, these cases make clear that bankruptcy courts have no

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jurisdiction over proceedings that have no effect on the estate of the debtor.

Celotex Corp. v. Edwards, 514 U.S. 300, 308 n.6 (1995) (citations omitted).

The Ninth Circuit has recently reiterated its approval of the *Pacor* test for pre-confirmation matters:

The test for post-confirmation "related to" jurisdiction was modified from the seminal pre-confirmation *Pacor* test for "related to" jurisdiction, which had been previously adopted by the Ninth Circuit in *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988). Surveying the courts that had applied a limited version of the *Pacor* test in the post-confirmation context, we recognized that the *Pacor* test of whether the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy . . . If the outcome could alter the debtor's rights, liabilities, options, or freedom of action . . . and which in any way impacts upon the handling and administration of the bankruptcy estate was somewhat overbroad in the post-confirmation context.

In re Wilshire Courtyard, 729 F.3d 1279, 1287 (9th Cir. 2013) (citations and quotations omitted).

First, it is unclear whether the complaint in interpleader would affect the administration of the bankruptcy estate, if a bankruptcy estate was being administered. Second, the Court must consider whether it can ever have "related to" jurisdiction in an action filed in a dismissed case because there is no estate to administer, and, consequently, such an action cannot affect administration of the estate.

B. The Effect of Dismissal on "Related to" Jurisdiction

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The *Pacor* test includes two requirements: (1) the action must alter the rights or obligations of the debtor; and (2) the action must have an effect on the administration of the estate. *See, e.g., In re Bass*, 171 F.3d 1016, 1022 (5th Cir. 1999). This second prong becomes an issue when an action is filed in a dismissed case. *See, e.g., id.* ("The second prong, however, is problematical. Although the injunction would have an impact on the Debtor, it could not have any effect whatsoever on his estate in bankruptcy or its administration. First and foremost, such an estate no longer exists.").

A different situation arises when, *after* an action is commenced, the underlying bankruptcy case is dismissed. Courts have generally concluded that in such a situation, retention of jurisdiction is discretionary, and based on principles of equity and judicial economy. *See, e.g., In re Smith*, 866 F.2d 576, 580 (3rd Cir. 1989) ("Drawing upon an analogy to the disposition of ancillary and pendent claims, the courts have held that they may consider a number of factors to determine whether jurisdiction should be retained."). Such a situation is, however, fundamentally different from the situation here. *See id.* ("Appellees fail, however, to distinguish between the determination of the existence of jurisdiction at the outset of these proceedings and the determination of whether 'related' claims should be dismissed with the dismissal of the bankruptcy case or the discharge of the debtor."); *In re Fietz*, 852 F.2d 455, 457 n.2 (9th Cir. 1988) ("Subject matter jurisdiction should be determined as of the date that the complaint, or in this case the cross-claim, was filed.").

In developing a standard for when a bankruptcy court should retain jurisdiction following the dismissal of the underlying case, courts have analogized the situation to a district court's retention of pendent state claims following dismissal of the federal claims. *See, e.g., In re Porges*, 44 F.3d 159, 162-63 (2nd Cir. 1995); *In re Carraher*, 971 F.2d 327, 328 (9th Cir. 1992); *In re Casamont Investors, Ltd.*, 196 B.R. 517, 522 (B.A.P. 9th Cir. 1996) ("In determining whether the bankruptcy court abused its discretion by retaining jurisdiction over related proceedings, the Ninth Circuit and several other circuits have analogized to cases concerning the propriety of district courts retaining jurisdiction over pendent state law claims after federal claims have been dismissed."). Applying that analogy and the applicable standard to the matter at issue here reveals the fundamental problem: a district court can never exercise pendent jurisdiction over state law claims when, at their commencement, there is no

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existing federal claim for the state claims to supplement. In the bankruptcy context, the Court cannot exercise related to jurisdiction if there is no bankruptcy case for the complaint to relate to.

C. Ancillary or Retained Jurisdiction

Attempts have been made to avoid this issue by arguing for the existence of supplemental or retained jurisdiction. *See In re Bass*, 171 F.3d 1016, 1023-242 (5th Cir. 1999) (supplemental) ("Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts, and the exercise of *ancillary and pendent* jurisdiction by bankruptcy courts could subsume the more restrictive 'related to' and 'arising in' jurisdiction, such that the latter would be rendered substantially, if not entirely, superfluous."); *id.* at 1025 (retained) ("[B]efore a court can exercise its discretion to 'retain' jurisdiction over a 'related proceeding,' the court must have had jurisdiction over that proceeding in the first place. The Denneys did not file their suit in Texas until *after* the bankruptcy case in Utah had been closed. From a purely temporal standpoint, there was no proceeding over which bankruptcy court jurisdiction could be 'retained.'"); *see also In re Morris*, 950 F.2d 1531, 1534 (11th Cir. 1992) (same). The Ninth Circuit has previously discussed the application of supplemental, or ancillary, jurisdiction in the context of interpreting a settlement agreement in a Chapter 11 structured dismissal:

Here, when Sea Hawk filed its adversary proceeding, VFDA's Chapter 11 case had been dismissed and a final decree entered. . . .

The bankruptcy court has no role in the resolution of the creditors' dispute, and it is involved only fortuitously because the dispute implicates the terms of a settlement agreement approved by the court as a precondition of the dismissal of VFDA's bankruptcy. . . .

The bankruptcy court did not consider dismissal of VFDA's bankruptcy to automatically divest it of jurisdiction over a related case. It reasoned that after

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dismissal, the court has discretion to retain jurisdiction over a related proceeding, *citing In re Carraher*, 971 F.2d 327, 328 (9th Cir. 1992). . . .

Carraher does not support the bankruptcy court's decision. It stands for the proposition that a bankruptcy court may retain jurisdiction over a related proceeding pending at the time of the dismissal of the bankruptcy case. It does not support the assertion of bankruptcy jurisdiction over a proceeding initiated subsequent to the dismissal of the bankruptcy case.

In re Valdez Fisheries Dev. Ass'n, Inc., 439 F.3d 545, 547-48 (9th Cir. 2006). *Valdez Fisheries*, however, made clear that the result may have been different had the Court's dismissal order explicitly retained jurisdiction over the dispute in question. *See id.* at 549 ("Ancillary jurisdiction may rest on one of two bases: (1) to permit disposition by a single court of factually interdependent claims, and (2) to enable a court to vindicate its authority and effectuate its decrees.") (*citing Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 79-80 (1994)). The second purpose of *Kokkonen's* retained, related-to jurisdiction is at issue here.

Nevertheless, the second prong of the *Kokkonen* test has its limits. *See, e.g., In re Ray*, 624 F.3d 1124, 1136 (9th Cir. 2010) ("In short, hearing a breach of contract claim predicated on evidence that came to light after a bankruptcy case had closed, its creditors paid, and the debtor discharged, stretches the limits of the bankruptcy court's ancillary jurisdiction too far, going beyond what is necessary for the bankruptcy court to 'effectuate its decrees.' . . . Reopening of the bankruptcy case is rare, and only used when necessary to resolve bankruptcy issues, not to adjudicate state law claims that can be adjudicated in state court.") (citation omitted). Importantly, an explicit retention of jurisdiction is only valid to the extent that jurisdiction is retained over claims that could have been heard at the time that jurisdiction was retained. *See, e.g., In re Nobel Group, Inc.*, 529 B.R. 284, 292 (Bankr. N.D. Cal. 2015). To conclude otherwise would be to allow bankruptcy courts to craft their own jurisdictional authority. *See, e.g., In re Resorts Int'l, Inc.*, 372 F.3d 154, 161 (3rd Cir. 2004) ("[N] either the bankruptcy court nor the parties can write their own jurisdictional ticket. When a court lacks subject matter jurisdiction over a dispute, the parties cannot create it by agreement even in a plan of reorganization.").

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First, there appears to be a problem in that jurisdiction was not conferred until the time of the dismissal order. Here, the retention of jurisdiction over the interpleader action was concurrent with dismissal of the case, and, as such, the claim for which jurisdiction was retained could not have been filed until after the case was dismissed. As stated above, related to jurisdiction is determined at the time the claim is filed, but, importantly, is premised upon the existence of a case that the claim can be related to. Therefore, because the jurisdiction in question was only conferred in a dismissal order, there would no existing bankruptcy case at the time an interpleader action could have been filed, so as to confer related to jurisdiction. The Court is aware of the confusing nature of the issue.

Second, even if the retention of jurisdiction had been in the settlement order, and, as such, the retention of jurisdiction would have arisen in the context of an existing case, allowing related to jurisdiction to exist², it would be unclear, possibly unlikely, that the Court would have subject matter jurisdiction over the complaint in interpleader. As briefly alluded to in section B, *supra*, the Ninth Circuit has limited the *Pacor* "related to" test to pre-confirmation matters, and has imposed a more demanding test for post-confirmation matters. *See In re Pegasus Gold Corp.*, 394 F.3d 1189, 1194 (9th Cir. 2005). The rationale for this distinction is that the bankruptcy estate ceases to exist post confirmation. *See generally id. Pegasus Gold*, therefore, replaced the more liberal *Pacor* test with a "close nexus" test after the dissolution of the bankruptcy estate. *See id.* The "close nexus" test requires that the matter be directly affect the bankruptcy proceeding for subject matter jurisdiction to be present. *See id.* It is difficult to ascertain how the "close nexus" test could be satisfied when the basis for the complaint in interpleader, the settlement agreement, also contemplates that the bankruptcy proceedings will cease.

Furthermore, even if Debtors had modified the settlement order and could show that the "close nexus" test was satisfied, the pendent jurisdiction test alluded to in section B, *supra*, may also merit consideration. This test instructs the Court to consider the interests of "economy, convenience, fairness and comity." *See In re Carraher*, 971 F.2d 327, 328 (9th Cir. 1992).

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The Court need not reach the "close nexus" or pendent jurisdiction tests at this point, however, for the following two reasons: (1) the modification of the dismissal order does not properly appear to confer jurisdiction on the Court, and (2) the settlement order expressly disclaims jurisdiction over the interpleader action.

TENTATIVE RULING

Based on the foregoing, the Court believes dismissal of the adversary for lack of subject matter jurisdiction is appropriate. The Court will consider whether to, on its own motion, amend the dismissal order to delete the retention of jurisdiction, and at the request of the parties, may continue the hearing for further briefing in light of the foregoing.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

ASR Constructors Inc a California	Represented By James C Bastian Jr Melissa Davis Lowe
-----------------------------------	--

Defendant(s):

UNITED STATES OF AMERICA	Represented By Charles Parker
Western Alliance Bank, an Arizona	Pro Se
Carlin Law Group APC	Represented By Kevin R Carlin
Bangerter Frazier & Graff PC	Represented By Daniel P Wilde
Ledcor Construction, Inc., a	Represented By

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Daniel P Scholz

Insurance Company Of The West

Represented By
Jennifer Leland
David B Shemano

Gotte Electric, Inc.

Pro Se

Employment Development

Represented By
Elisa B Wolfe-Donato

Steven Schonder

Pro Se

Angela Denise McKnight

Pro Se

Movant(s):

Inland Machinery, Inc.

Represented By
James C Bastian Jr
Melissa Davis Lowe

Another Meridian Company, LLC

Represented By
James C Bastian Jr
Melissa Davis Lowe

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

Plaintiff(s):

Inland Machinery, Inc.

Represented By
James C Bastian Jr
Melissa Davis Lowe

Another Meridian Company, LLC

Represented By
James C Bastian Jr
Melissa Davis Lowe

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

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6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

Adv#: 6:17-01059 ASR Constructors Inc a California Corporation et a v. Gotte Electric, Inc. et

#37.00 CONT Status Conference RE: Complaint by ASR Constructors Inc a California Corporation, Another Meridian Company, LLC, Inland Machinery, Inc. against Gotte Electric, Inc., Insurance Company Of The West, Employment Development Department, Trico-Savi Business Park, L.P., a California limited partnership, Angela Denise McKnight, Cardlock Fuels Systems Inc., Steven Schonder, Western Alliance Bank, an Arizona corporation, UNITED STATES OF AMERICA, Carlin Law Group APC, Ledcor Construction, Inc., a Washington corporation, Bangerter Frazier & Graff PC. (Charge To Estate \$350.00). Nature of Suit: 02- Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

From: 5/16/17, 6/19/17, 7/24/17, 9/26/17

Also #36

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

Defendant(s):

UNITED STATES OF AMERICA

Represented By
Charles Parker

Western Alliance Bank, an Arizona

Pro Se

Carlin Law Group APC

Represented By

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Kevin R Carlin

Bangerter Frazier & Graff PC

Represented By
Daniel P Wilde

Ledcor Construction, Inc., a

Represented By
Daniel P Scholz

Insurance Company Of The West

Represented By
Jennifer Leland
David B Shemano

Gotte Electric, Inc.

Pro Se

Employment Development

Represented By
Elisa B Wolfe-Donato

Steven Schonder

Pro Se

Angela Denise McKnight

Pro Se

Plaintiff(s):

Inland Machinery, Inc.

Represented By
James C Bastian Jr
Melissa Davis Lowe

Another Meridian Company, LLC

Represented By
James C Bastian Jr
Melissa Davis Lowe

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

**United States Bankruptcy Court
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2:00 PM

6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

#38.00 Motion to Amend (related document(s)601 Order on Motion to Approve
Compromise Under Rule 9019 (BNC-PDF))

Also #39 - #41

EH__

Docket 671

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

Movant(s):

Inland Machinery, Inc.

Represented By
Melissa Davis Lowe
James C Bastian Jr

Another Meridian Company, LLC

Represented By
Melissa Davis Lowe
James C Bastian Jr

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

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6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

#39.00 CONT Order (1) Setting Scheduling Hearing and Case Management Conference and (2) Requiring Status Report re **Another Meridian Company LLC**

From: 3/7/17, 7/11/17, 7/24/17, 9/26/17

Also #38 - #41

EH__

Docket 630

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

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6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

#40.00 CONT Order (1) Setting Scheduling Hearing and Case Management Conference and (2) Requiring Status Report re **Inland Machinery, Inc**

From: 3/7/17, 7/11/17, 7/24/17, 9/26/17

Also #38 - #41

EH__

Docket 630

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

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6:13-25794 ASR Constructors Inc a California Corporation

Chapter 11

#41.00 CONT Order (1) Setting Scheduling Hearing and Case Management Conference and (2) Requiring Status Report re **ASR Constructors Inc**

From: 3/7/17, 7/11/17, 7/24/17, 9/26/17

Also #38 - #40

EH__

Docket 630

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ASR Constructors Inc a California

Represented By
James C Bastian Jr
Melissa Davis Lowe

**United States Bankruptcy Court
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Hearing Room 303

11:00 AM

6:13-22710 Jesus M. Tapia

Chapter 7

#1.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 85

Tentative Ruling:

TENTATIVE RULING

10/25/2017

No opposition has been filed.
Service was Proper.

The applications for compensation of the Trustee and Counsel for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 14,124.59
Trustee Expenses: \$ 91.14

Attorney Fees: \$ 27,778.50
Attorney Costs: \$ 371.58

Bankruptcy Court: \$350
Reid & Hellyer Trust Account: \$160,000
Troy Brenes: \$2,212.57

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Jesus M. Tapia

Represented By
Michael Smith

Trustee(s):

Robert Whitmore (TR)

Represented By

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CONT...

Jesus M. Tapia

Douglas A Plazak
Troy A Brenes

Chapter 7

**United States Bankruptcy Court
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Wednesday, October 25, 2017

Hearing Room 303

11:00 AM

6:14-18299 Donna Smith

Chapter 7

#2.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 81

Tentative Ruling:

TENTATIVE RULING

10/25/17

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1,838.00

Trustee Expenses: \$ 256.93

Accountant Fees: \$ 1,000.00

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Donna Smith

Represented By
Julie J Villalobos

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

6:14-21918 Taik Hoon Kim

Chapter 7

#3.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 77

Tentative Ruling:

TENTATIVE RULING

10/25/17

No opposition has been filed.
Service was Proper.

The applications for compensation of the Trustee, Counsel for the Trustee, and Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 2,981.31

Attorney Fees: \$ 9,626.26

Accountant Fees: \$ 1,862.50

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Taik Hoon Kim

Represented By
Arnold H Wuhrman

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rosendo Gonzalez

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Wednesday, October 25, 2017

Hearing Room 303

11:00 AM

6:16-16434 Ryan David Miller and Courtney Renee Miller

Chapter 7

#4.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 41

Tentative Ruling:

TENTATIVE RULING

10/25/17

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1,322.00
Trustee Expenses: \$ 116.82

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Ryan David Miller

Represented By
Andrew Nguyen

Joint Debtor(s):

Courtney Renee Miller

Represented By
Andrew Nguyen

Trustee(s):

Robert Whitmore (TR)

Pro Se

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Hearing Room 303

11:00 AM

6:16-20886 Alfonso Garibay

Chapter 7

#5.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 29

Tentative Ruling:

TENTATIVE RULING

10/25/17

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1,318.60

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Alfonso Garibay

Represented By
James Geoffrey Beirne

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

6:16-21192 Maria Elena Zuniga

Chapter 7

#6.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 18

Tentative Ruling:

TENTATIVE RULING

10/25/17

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1,067.00
Trustee Expenses: \$ 27.00

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Maria Elena Zuniga

Represented By
Candace J Arroyo

Trustee(s):

Larry D Simons (TR)

Pro Se

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11:00 AM

6:10-11814 Scott Leon Bosco and Karen Lee Bosco

Chapter 7

#7.00 Application to Employ Aylstock, Witkin, Kreis & Overholtz, PLLC; The Pulaski Law Firm, PLLC; Osborne & Associates; and Anapol Weiss as Special Counsel for Chapter 7 Trustee

EH__

Docket 22

Tentative Ruling:

10/25/17

BACKGROUND

On January 24, 2010, Scott & Karen Bosco ("Debtors") filed a Chapter 7 voluntary petition. On May 11, 2011, Debtors received a discharge, and on May 26, 2011, the case was closed.

On October 19, 2016, the case was reopened upon motion of UST. On March 14, 2017, Trustee filed an application to employ Aylstock, Witkin, Kreis & Overholtz ("Aylstock") as special counsel. On July 28, 2017, Trustee amended the application to request the employment of the Pulaski Law Firm, Osborne & Associates, and Anapol Weiss in addition to Aylstock. After originally filing the application on negative notice, the matter was set for hearing on August 23, 2017.

DISCUSSION

Trustee's application refers to § 327(e), which states:

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CONT... **Scott Leon Bosco and Karen Lee Bosco**

Chapter 7

(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

While Trustee has included the required statements of disinterestedness, it is unclear why it is necessary to employ four law firms. Specifically, the application does not delineate the tasks and responsibility of the different law firms; indeed, each declaration is identical in so far as it describes the tasks to be accomplished. Nor does the application discuss the history of the litigation or each of the law firms' previous roles. Additionally, each of the four declarations states that the law firm of the declarant shall be entitled to a 40% contingency fee, which is obviously impossible.

TENTATIVE RULING

Trustee to explain the nature of the proposed employment, the need for four separate counsel, and allocation of fees between counsel.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Scott Leon Bosco

Represented By
Richard H Travis
Dana Travis

Joint Debtor(s):

Karen Lee Bosco

Represented By
Richard H Travis

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CONT... Scott Leon Bosco and Karen Lee Bosco

Chapter 7

Dana Travis

Movant(s):

Robert Whitmore (TR)

Pro Se

Trustee(s):

Robert Whitmore (TR)

Pro Se

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11:00 AM

6:13-26277 Charles Frederick Biehl

Chapter 7

#8.00 CONT Chapter 7 Trustee's Motion to Approve Compromise Under Rule 9019
Between the Bankruptcy Estate and Rene Clements-Biehl

From: 9/2717

EH__

Docket 213

Tentative Ruling:

9/27/17

BACKGROUND

On September 30, 2013, Charles Biehl ("Debtor") filed a Chapter 7 voluntary petition. On September 21, 2015, Trustee filed an adversary proceeding against Rene Clements-Biehl ("Defendant") for: (1) avoidance and recovery of intentional fraudulent transfer; (2) avoidance and recovery of constructively fraudulent transfer; (3) avoidance and recovery of preferential transfer; (4) disallowance of claims; (5) unjust enrichment; (6) declaratory relief. The subject of the adversary proceeding was certain real property located at 6 Dover Ct., Rancho Mirage, CA 92270 and 3338 Tempe Dr., Huntington Beach, CA 92649, and certain furniture located therein.

According to Trustee, pursuant to a marital settlement agreement, a state court entered a judgment confirming a property division on October 30, 2012. Later, on November 21, 2012, Debtor transferred to Defendant the real property located in Huntington Beach pursuant to an interspousal grant deed.

On August 15, 2017, Trustee filed a motion to approve compromise pursuant to Fed.

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CONT... **Charles Frederick Biehl** **Chapter 7**

R. Bankr. P. Rule 9019. Trustee proposes to settle the adversary proceeding for either payment of \$229,000 within four months, or payment of \$256,000 over four years. On September 7, 2017, the matter was set for hearing.

DISCUSSION

Fed. R. Bankr. P. Rule 9019 provides that:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

The Ninth Circuit Court of Appeals have previously outlined the factors to be considered in approving a compromise pursuant to Rule 9019: (1) the probability of success in the litigation; (2) the difficulties to be encountered in the matter of collection; (3) the complexity, expense, inconvenience and delay of litigation; and (4) the interest of creditors with deference to their reasonable. *See In re A&C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The listed factors assist the Court in determining "the fairness, reasonableness and adequacy of a proposed settlement agreement." *Id.*

Trustee's compromise motion does not provide the information the Court requires to apply the *A&C Properties* factors or to assess the reasonableness of the settlement because the motion fails to identify the value of the Property or estimate the value of Debtor's interest in the property, rendering it impossible to determining the reasonableness of the settlement amount.

In the absence of any evidence regarding the value of the Property or the value of the

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CONT... **Charles Frederick Biehl** **Chapter 7**
community estate's interest in the Property, the Court cannot approve the compromise when only general arguments have advanced in support of the compromise.

TENTATIVE RULING

The Court is inclined to CONTINUE the matter for Trustee to file a supplemental declaration.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Charles Frederick Biehl

Represented By

Daryl L Binkley - DISBARRED -
Steven L Bryson

Movant(s):

John P Pringle (TR)

Represented By

James C Bastian Jr
Elyza P Eshaghi
Brandon J Iskander
Lynda T Bui

Trustee(s):

John P Pringle (TR)

Represented By

James C Bastian Jr
Elyza P Eshaghi
Brandon J Iskander
Lynda T Bui

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6:13-28595 Josue Luna and Fabiola Luna

Chapter 7

#9.00 Motion for extension of time to file a complaint objecting to discharge

EH__

Docket 170

Tentative Ruling:

10/25/17

BACKGROUND

On November 14, 2013, Josue & Fabiola Luna ("Debtors") filed a Chapter 13 voluntary petition. On January 31, 2014, Debtors' Chapter 13 plan was confirmed. After three plan modifications, Debtors converted their case to Chapter 7 on June 21, 2017.

On September 25, 2017, the Chapter 7 Trustee filed a motion for an extension of time to file a complaint objecting to discharge. Trustee states that at the initial Chapter 7 meeting of creditors he discovered that Debtor-husband transferred a 25% share in a closely held corporation to his father during the Chapter 13 case. Trustee states that, after continuing the meeting of creditors, Debtors failed to appear at the next two meetings. Trustee seeks an extension of the deadline to allow for further investigation into Debtors' finances and to acquire additional documentation.

DISCUSSION

Fed. R. Bankr. P. Rule 4004(a) states:

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- (1) In a chapter 7 case, a complaint, or a motion under § 727(a)(8) or (9) of the Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 case, the complaint shall be filed no later than the first date set for the hearing on confirmation. In a chapter 13 case, a motion objecting to the debtor's discharge under § 1328(f) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). At least 28 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.

And Fed. R. Bankr. P. Rule 4004(b) states:

- (1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.
- (2) A motion to extent the time to object to discharge may be filed after the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.

Here, Debtors' delay in providing the information requested by the Trustee, and their absence at the last two meetings of creditors, constitutes sufficient cause to extend the deadline. *See* Collier on Bankruptcy ¶ 4004.03[2] (16th ed. 2013) ("A debtor's delays in responding to discovery may be sufficient cause. Obviously, a delay in the meeting of creditors to a date close to or after the deadline may constitute such cause.") (*citing In re McCormack*, 244 B.R. 203 (Bankr. D. Conn. 2000)).

Moreover, Debtor's failure to oppose shall be deemed consent to the relief requested pursuant to Local Rule 9013-1(h).

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TENTATIVE RULING

The Court is inclined to GRANT the motion.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Josue Luna

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Fabiola Luna

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

John P Pringle (TR)

Represented By
Todd A Frealy
Carmela Pagay

Trustee(s):

John P Pringle (TR)

Represented By
Todd A Frealy
Carmela Pagay

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6:15-10709 Crossfire Marketing Group LLC

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#10.00 Motion to Disallow Claims No. 3 of Durham Commercial Cleaning as a Priority Claim but to Allow as a General Unsecured Claim

Also #11 - #13

EH__

Docket 25

Tentative Ruling:

10/25/2017

Background:

On January 28, 2015, Crossfire Marketing Group ("Debtor") filed a Chapter 7 voluntary petition. On September 14, 2015, Durham Commercial Cleaning ("Creditor") filed a priority unsecured claim in the amount of \$850.00 ("Claim 3"). On September 12, 2017, Trustee filed an objection to Claim 3, contending that Claim 3 is not entitled to priority status.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing

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upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Claim 3 states that it is entitled to priority status under 11 U.S.C. § 507(a)(7). 11 U.S.C. § 507(a)(7) states:

(a) The following expenses and claims have priority in the following order:

(7) Seventh, allowed unsecured claims of individuals, to the extent of \$2,850 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

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The above priority provision is clearly inapplicable here. First of all, Creditor is not an individual. Additionally, it appears that Creditor provided services to Debtor without receiving compensation. Section 507(a)(7) is applicable when a Creditor makes a payment towards property or services that are to be provided or performed by Debtor, which is not the case here.

Finally, the Court deems failure to oppose to be consent to the relief requested pursuant to Local Rule 9013-(1)(h).

Tentative Ruling

The Court is inclined to SUSTAIN the objection. Claim 3 is allowed as a general unsecured claim not entitled to priority status.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Crossfire Marketing Group LLC

Represented By
Douglas A Plazak

Movant(s):

John P Pringle (TR)

Pro Se

Trustee(s):

John P Pringle (TR)

Pro Se

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6:15-10709 Crossfire Marketing Group LLC

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#11.00 Motion to Allow Claim 8 of JB Upland LLC as a timely filed general unsecured claim

Also #10 - #13

EH__

Docket 27

Tentative Ruling:

10/25/2017

Background:

On January 28, 2015, Crossfire Marketing Group ("Debtor") filed a Chapter 7 voluntary petition. On January 25, 2016, JP Upland ("Creditor") filed a general unsecured claim in the amount of \$1,920.70 ("Claim 8"). The claims bar deadline was November 30, 2015. On September 12, 2017, Trustee filed an "objection" to Claim 8, contending that Claim 8 should be allowed as a timely filed claim.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *See Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing

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upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

11 U.S.C. § 726(a)(2) states:

- (a) Except as provided in section 510 of this title, property of the estate shall be distributed –
 - (2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is –
 - (A) timely filed under section 501(a) of this title;

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(B) timely filed under section 501(b) or 501(c) of this title; or

(C) tardily filed under section 501(a) of this title, if –

(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and

(ii) proof of such claim is filed in time to permit payment of such claim

(3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection

Here, there are two issues with Trustee's request. First, Trustee's request, made without reference to specific authority, that the claim be treated as timely filed is precluded by the above statute. While § 726(a)(2) allows tardily filed claims to be treated equally with timely filed claims in certain circumstances, here Trustee is asking the Court to allow an untimely claim as timely, when her presumably should be requesting the untimely claim be paid pro rata pursuant to § 726(a)(2)(C)(i). Second, to that point, there is no evidence upon which the Court could conclude that the requirements of § 726(a)(2)(C)(i) have been satisfied. Specifically, Creditor clearly received notice of the bankruptcy filing at some point prior to the filing of the proof of claim. The record does not establish whether the time when Creditor received actual knowledge of the case was early enough to permit Creditor to file a timely proof of claim.

Rather, without more, it appears this claim should be subordinated pursuant to § 726(a)(3).

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Tentative Ruling

The Court is inclined to OVERRULE the objection.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Crossfire Marketing Group LLC

Represented By
Douglas A Plazak

Movant(s):

John P Pringle (TR)

Pro Se

Trustee(s):

John P Pringle (TR)

Pro Se

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6:15-10709 Crossfire Marketing Group LLC

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#12.00 Motion to Allow Claim 9 of Sasha Wilson as a Timely Filed General Unsecured Claim

Also #10 - #13

EH__

Docket 31

Tentative Ruling:

10/25/2017

Background:

On January 28, 2015, Crossfire Marketing Group ("Debtor") filed a Chapter 7 voluntary petition. On January 26, 2016, Sasha Wilson ("Creditor") filed a general unsecured claim in the amount of \$1,235 ("Claim 9"). The claims bar deadline was November 30, 2015. On September 13, 2017, Trustee filed an "objection" to Claim 9, contending that Claim 9 should be allowed as a timely filed claim.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing

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upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

11 U.S.C. § 726(a)(2) states:

- (a) Except as provided in section 510 of this title, property of the estate shall be distributed –
- (2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is –
 - (A) timely filed under section 501(a) of this title;

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(B) timely filed under section 501(b) or 501(c) of this title; or

(C) tardily filed under section 501(a) of this title, if –

(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and

(ii) proof of such claim is filed in time to permit payment of such claim

(3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection

Here, there are two issues with Trustee's request. First, Trustee's request, made without reference to specific authority, that the claim be treated as timely filed is precluded by the above statute. While § 726(a)(2) allows tardily filed claims to be treated equally with timely filed claims in certain circumstances, here Trustee is asking the Court to allow an untimely claim as timely, when her presumably should be requesting the untimely claim be paid pro rata pursuant to § 726(a)(2)(C)(i). Second, to that point, there is no evidence upon which the Court could conclude that the requirements of § 726(a)(2)(C)(i) have been satisfied. Specifically, Creditor clearly received notice of the bankruptcy filing at some point prior to the filing of the proof of claim. The record does not establish whether the time when Creditor received actual knowledge of the case was early enough to permit Creditor to file a timely proof of claim.

Rather, without more, it appears this claim should be subordinated pursuant to § 726(a)(3).

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Tentative Ruling

The Court is inclined to OVERRULE the objection.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Crossfire Marketing Group LLC

Represented By
Douglas A Plazak

Movant(s):

John P Pringle (TR)

Pro Se

Trustee(s):

John P Pringle (TR)

Pro Se

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6:15-10709 Crossfire Marketing Group LLC

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#13.00 Motion to Disallow Claims No. 10 of Gary B. Wachs, CPA as a Priority Claim but to Allow as a Timely Filed General Unsecured Claim

Also #10 - #12

EH__

Docket 34

Tentative Ruling:

10/25/2017

Background:

On January 28, 2015, Crossfire Marketing Group ("Debtor") filed a Chapter 7 voluntary petition. On March 28, 2016, Gary Wachs ("Creditor") filed a priority unsecured claim in the amount of \$2,212.50 ("Claim 10"). The claims bar deadline was November 30, 2015. On September 13, 2017, Trustee filed an "objection" to Claim 10, contending that Claim 10 should be allowed as a timely filed claim but should not be entitled to priority status.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP

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9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *See In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *See Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

Regarding whether Claim 10 should be entitled to priority status, Claim 10 cites § 507 (a)(1)(C) as the basis for claiming priority status. That provision refers to administrative expenses of the trustee, and is clearly inapplicable to Claim 10.

11 U.S.C. § 726(a)(2) states:

(a) Except as provided in section 510 of this title, property of the estate

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shall be distributed –

(2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is –

(A) timely filed under section 501(a) of this title;

(B) timely filed under section 501(b) or 501(c) of this title; or

(C) tardily filed under section 501(a) of this title, if –

(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and

(ii) proof of such claim is filed in time to permit payment of such claim

(3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection

Here, there are two issues with Trustee's request. First, Trustee's request, made without reference to specific authority, that the claim be treated as timely filed is precluded by the above statute. While § 726(a)(2) allows tardily filed claims to be treated equally with timely filed claims in certain circumstances, here Trustee is asking the Court to allow an untimely claim as timely, when her presumably should be requesting the untimely claim be paid pro rata pursuant to § 726(a)(2)(C)(i). Second, to that point, there is no evidence upon which the Court could conclude that the requirements of § 726(a)(2)(C)(i) have been satisfied. Specifically, Creditor clearly received notice of the bankruptcy filing at some point prior to the filing of the proof of claim. The record does not establish whether the time when Creditor received actual knowledge of the case was early enough to permit Creditor to file a timely proof of

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claim.

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Rather, without more, it appears this claim should be subordinated pursuant to § 726 (a)(3).

Tentative Ruling

The Court is inclined to SUSTAIN IN PART and OVERRULE IN PART the claim objection. Claim 10 is not entitled to priority and is not entitled to be treated as a timely filed claim.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Crossfire Marketing Group LLC

Represented By
Douglas A Plazak

Movant(s):

John P Pringle (TR)

Pro Se

Trustee(s):

John P Pringle (TR)

Pro Se

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6:15-14230 Home Security Stores, Inc.

Chapter 7

#14.00 Chapter 7 Trustee, John P. Pringle's Notice of Motion and Motion for Order Extending Time to File Avoidance Actions Under 11 U.S.C. § 546

EH__

Docket 93

Tentative Ruling:

10/25/17

BACKGROUND

On April 28, 2015, Home Security Stores, Inc. ("Debtor") filed a Chapter 7 voluntary petition. On May 28, 2015, the Court authorized the employment of Goe & Forsythe, LLP as general counsel to Trustee. On July 2, 2015, the Court authorized the employment of Hahn Fife & Co. LLP as accountants for Trustee. On July 17, 2015, the Court authorized the employment of Credit Management Association as auctioneer for Trustee.

On April 20, 2016, the Court extended the deadline for Trustee to file avoidance actions by six months, to October 28, 2017. On April 28, 2017, the Trustee filed an avoidance action. On October 4, 2017, Trustee filed another motion to extend the deadline for Trustee to file avoidance actions, requesting an additional six months.

At the initial meeting of creditors, the Trustee learned that Debtor's two shareholders, Ralph and Stacy Winn (the "Winns"), had physically removed Debtor's servers and some computers, on which Debtor's financials were recorded. Trustee asserts that Debtor engaged in transfers to insiders after the cessation of its operations. After recovering the servers, Trustee learned that the information had been removed.

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Trustee has requested corporate records from Debtor, and while such records appear to have been received, Trustee contends that the records are vast, yet incomplete. Trustee obtained an order authorizing a 2004 examination of Debtor's non-bankruptcy attorney, Harry Histen ("Histen"), however, according to Trustee, it is not clear that Histen fully complied with the order. Trustee requests additional time to continue his investigation of Debtor's finances.

DISCUSSION

11 U.S.C. § 546 requires that an avoidance action be brought within two years of the entry of the order for relief. That deadline, however, can be extended. *See, e.g., In re United Ins. Mgmt., Inc.*, 14 F.3d 1380, 1384 (9th Cir. 1994). The current deadline in this case is April 28, 2017, which Trustee seeks to extend for six months to and including October 28, 2017.

Fed. R. Bankr. P. Rule 9006(b) states:

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

The Court adopts a "for cause" standard when determining whether to utilize Fed. R. Bankr. P. Rule 9006(b) to extend a deadline. *See In re Fundamental Long Term Care, Inc.*, 501 B.R. 784, 789 (Bankr. M.D. Fla. 2013). In this case, Trustee's motion indicates that Histen and Debtor have not been fully cooperative with, and possibly obstructive of, Trustee's attempt to investigate Debtor's financial affairs. Trustee indicates that he does not yet have the information necessary to assess whether further

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avoidance actions are necessary, and it appears that such delay is through no fault of Trustee.

Moreover, the Court deems lack of opposition as consent to the relief requested pursuant to Local Rule 9013-(1)(h).

TENTATIVE RULING

For the foregoing reasons, the Court is inclined to GRANT the motion.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Home Security Stores, Inc.

Represented By
Winfield S Payne III

Movant(s):

John P Pringle (TR)

Represented By
Robert P Goe
Charity J Miller

Trustee(s):

John P Pringle (TR)

Represented By
Robert P Goe
Charity J Miller

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6:16-11635 Sam Daniel Dason and Greeta Sam Dason

Chapter 7

#15.00 Motion with Notice for Order Approving Sale of Estate Property Free and Clear of Liens Pursuant to Bankruptcy Code sect 363(b)(1); & 363(f), Subject to Overbids

EH__

Docket 140

Tentative Ruling:

10/25/17

BACKGROUND

On February 26, 2016, Sam & Greeta Dason ("Debtors") filed a Chapter 7 voluntary petition. On Schedule A, Debtors listed certain commercial real property located at 944 Via Lata, Colton, California 92324 (the "Property"). On February 22, 2017, the Court approved Trustee's application to employ Ramsaur Law Office as general insolvency counsel. On March 6, 2017, the Court approved Trustee's application to employ Glassratner Brokerage Services ("Broker") as real estate broker. On March 7, 2017, the Court approved Trustee's application to employ Karl Anderson as accountant. On April 5, 2017, the Court approved a compromise between Debtors and Trustee relating to certain non-exempt assets.

On September 28, 2017, Trustee filed a motion for an order: (1) approving the sale of estate property free and clear of liens pursuant to Bankruptcy Code § 363(b)(1) and (f), subject to overbids; (2) approving payment of real estate commission and other costs; and (3) granting related relief. The proposed sale price is \$1,250,000. Trustee proposes to pay \$100,000 as costs of sale, approximately \$560,000 to Bank of America on the first trust deed (paying it off in full), approximately \$90,000 to Bank of America on the second trust deed (paying it off in full), and approximately \$50,000 on account of Bank of America's cross-collateralization provision securing the total

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amount of \$700,000.¹ The remaining \$450,000 will accrue to the bankruptcy estate.

DISCUSSION

I. Sale of Estate Property

11 U.S.C. § 363(b)(1) allows a trustee to sell property of the estate outside of the ordinary course, after notice and a hearing. A sale pursuant to § 363(b) requires a demonstration that the sale has a valid business justification. *In re 240 North Brand Partners, Ltd.*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996). "In approving any sale outside the ordinary course of business, the court must not only articulate a sufficient business reason for the sale, it must further find it is in the best interest of the estate, i.e. it is fair and reasonable, that it has been given adequate marketing, that it has been negotiated and proposed in good faith, that the purchaser is proceeding in good faith, and that it is an "arms-length" transaction." *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal.).

While Broker originally attempted to sell the property for \$1,599,000, after more than six months of marketing the property, the best offer received by Broker is for \$1,250,000. Given the extensive marketing of the property, the fact that the sale appears to be a good faith, arms-length transaction, and the fact that the estate would receive \$450,000 for distribution to unsecured creditors, the Court concludes that Trustee has articulated an adequate business reason for the sale.

II. Sale Free & Clear of Liens

11 U.S.C. § 363(f) (2010) states:

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(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if-

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Trustee contends that § 363(f)(3)-(4) are applicable. First, Trustee contends that aggregate value of all liens on the property is \$700,000, which is exceeded by the purchase price of \$1,250,000. Furthermore, Trustee contends that to the extent there are remaining unidentified and unresolved liens at closing, those liens are in bona fide dispute.

Because Trustee has established that § 363(f)(3) is applicable, and in the absence of any objection, Trustee has met its burden in securing a sale free and clear of liens.

III. 14-Day Stay

Fed. R. Bankr. P. Rule 6004(h) states: "An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Court deems the absence of

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CONT... Sam Daniel Dason and Greeta Sam Dason Chapter 7
objections to be consent to the relief requested, pursuant to Local Rule 9013-(1)(h),
and, therefore, will waive the stay of Rule 6004(h).

IV. Miscellaneous

The Court has reviewed the remainder of Trustee's miscellaneous requests, including for a determination that the buyer is a good faith purchaser under § 363(m). The Court is inclined to grant all requests, however, the Court notes that there is no evidence in the motion to support a § 363(m) determination.

TENTATIVE RULING

The Court is inclined to GRANT the motion in its entirety conditioned on Movant filing a declaration establishing that the purchaser is a good-faith purchaser under § 363(m).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Sam Daniel Dason

Represented By
Robert G Uriarte

Joint Debtor(s):

Greeta Sam Dason

Represented By
Robert G Uriarte

Movant(s):

Lynda T. Bui (TR)

Represented By

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Trustee(s):

Lynda T. Bui (TR)

Represented By
Brett Ramsaur

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6:17-14228 Michelle Meredith

Chapter 7

#16.00 Motion to Reconsider Supplemental Declaration of Noreen Madoyan in Support of Trustee's Motion for Order (1) Requiring Turnover of Property of the Estate Pursuant to 11 U.S.C. sect 542; and (2) Compelling the Debtor's Cooperation with the Trustee Pursuant to 11 U.S.C. sect 521

EH__

Docket 70

Tentative Ruling:

10/25/17

BACKGROUND

On May 19, 2017, Michelle Meredith ("Debtor") filed a Chapter 7 voluntary petition. On September 13, 2017, Trustee filed a motion for turnover, and, on September 28, 2017, Trustee's attorney, Noreen Madoyan filed a supplemental declaration in support of the turnover motion. Trustee's motion was granted at a hearing on October 4, 2017, and an order was entered to that effect on October 10, 2017.

On October 13, 2017, Debtor filed a motion to reconsider the supplemental declaration of Noreen Madoyan. On October 17, 2017, Trustee filed his opposition.

As a preliminary matter, the Court notes that service and notice of this motion is improper. Regarding notice, Debtor has scheduled this hearing on twelve days notice, instead of the twenty-one days required by Local Rule 9013-(1)(d)(2). Furthermore, Debtor has signed the proof of service herself, despite the fact that the proof of service begins by stating: "I am over the age of 18 and *not* a party to this bankruptcy case."

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DISCUSSION

Debtor's motion primarily provides a detailed description of Debtor's recent personal and financial circumstances, and an account that would appear to depict a pattern of negligent or unprofessional conduct by her attorney, Patricia Ashcraft. At the conclusion of Debtor's motion, she requests that the court "reconsider any rulings made or orders issued based on the false allegations and misstatements made regarding my conduct, regard for this court and instructions issued by all parties involved with this case."

For several reasons, the Court deems it appropriate to continue this matter. First, Debtor has scheduled this hearing on shortened time without filing an application shortening time. Second, it is not clear what Debtor is requesting, and it appears Debtor is not sure herself. More specifically, the only docket entry that is explicitly objected to by Debtor is a declaration of Trustee's attorney and, clearly, the Court's cannot "reconsider" a declaration. While the Court could construe Debtor's motion as a request to reconsider the turnover order, the Court declines to do so at this time for two reasons: (1) Debtor's motion admits that she has not seen the order, at least as of the time of the filing of the motion, and thus, necessarily, it would be unclear what parts Debtor wants reconsidered; and (2) Debtor's motion indicates that she is attempting to obtain new counsel.

TENTATIVE RULING

In light of the foregoing, the Court is inclined to continue the matter for Debtor to obtain new counsel or, alternatively, for Debtor to file a supplemental declaration explaining what ruling she wants the Court to reconsider.

APPEARANCES REQUIRED.

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CONT... Michelle Meredith

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Party Information

Debtor(s):

Michelle Meredith

Represented By
Patricia M Ashcraft

Movant(s):

Michelle Meredith

Represented By
Patricia M Ashcraft

Trustee(s):

Howard B Grobstein (TR)

Represented By
Noreen A Madoyan

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6:16-17280 Jesus Ramirez Guillen and Yovana Mondagron Guillen

Chapter 7

#17.00 Motion for fine and/or disgorgement of fees against bankruptcy petition preparer United States Trustees Notice Of Motion And Motion To Fine And Enjoin Bankruptcy Petitioner Preparer Hugo Laguna

EH__

Docket 40

Tentative Ruling:

10/25/17

BACKGROUND

On August 15, 2016, Jesus & Yovana Guillen ("Debtors") filed a Chapter 7 voluntary petition. On November 23, 2016, UST filed a motion for order requiring Hugo Laguna ("Laguna") to pay fines to the UST, pay damages to Debtor, and disgorge fees received. On December 16, 2016, Debtors filed a declaration clarifying answers that were provided at the meeting of creditors. On December 22, 2016, Hugo Laguna ("Laguna") filed a late declaration. After continuing the hearing, Laguna and UST eventually stipulated to a resolution of the matter. The Court entered an order on April 19, 2017, requiring Laguna to pay \$100 to Debtors within thirty days, and to pay \$250 to UST within sixty days. Laguna was to file a compliance declaration regarding the former within forty-five days.

On May 23, 2017, the case was closed. On September 22, 2017, the case was reopened, and on September 25, 2017, UST filed a motion to fine and enjoin Laguna. UST asserts that Laguna has not complied with the Court order of April 19, 2017. On October 20, 2017, Laguna filed a late response. Laguna asserts that he paid \$250 to UST shortly after filing the instant motion.

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CONT... **Jesus Ramirez Guillen and Yovana Mondagron Guillen**

Chapter 7

DISCUSSION

11 U.S.C. § 110(j)(3) states: "The court, as part of its contempt power, may enjoin a bankruptcy petition preparer that has failed to comply with a previous order issued under this section. The injunction under this paragraph may be issued on the motion of the court, the trustee, or the United States trustee."

As noted by UST, in order to obtain civil contempt sanctions, a movant must demonstrate: (1) violation of a court order; (2) beyond substantial compliance; (3) not based on a good faith and reasonable interpretation of the order; and (4) by clear and convincing evidence. *See Labor/Cnty. Strategy Ctr. V. L.A. Cnty. Metro. Transp. Auth.*, 564 F.3d 1115, 1123 (9th Cir. 2009). As is evidenced by the docket and UST's motion, Laguna has failed to comply with the Court's order. The Court's order was simple and unambiguous, and there is clear and convincing evidence that Laguna has not complied. Therefore, the Court will issue the requested injunction.

11 U.S.C. § 110(h)(5) states: "A bankruptcy petition preparer shall be fined not more than \$500 for each failure to comply with a court order to turn over funds within 30 days of service of such order." Here, the Court's order was entered over six months ago, and was straightforward, requiring payment of a total of \$350. The order was entered in response to a stipulation between UST and Laguna, and, therefore, Laguna was certainly aware of the order.

TENTATIVE RULING

The Court is inclined to GRANT the motion to the extent that the motion seeks an injunction enjoining Laguna from providing bankruptcy preparer services. Parties to address Laguna's compliance with payment obligations.

APPEARANCES REQUIRED.

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CONT... Jesus Ramirez Guillen and Yovana Mondagron Guillen

Chapter 7

Party Information

Debtor(s):

Jesus Ramirez Guillen Pro Se

Joint Debtor(s):

Yovana Mondagron Guillen Pro Se

Movant(s):

United States Trustee (RS) Represented By
Mohammad Tehrani

Trustee(s):

Arturo Cisneros (TR) Pro Se

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6:17-10240 Ariel A. Flores

Chapter 7

#18.00 Motion for Turnover of Property of the Estate Held by Debtor Pursuant to 11 USC § 542(a) and (e)

EH__

Docket 46

Tentative Ruling:

10/25/17

BACKGROUND

On January 11, 2017, Ariel Flores ("Debtor") filed a Chapter 7 voluntary petition. On January 30, 2017, the case was dismissed for failure to file case commencement documents. On February 10, 2017, the dismissal was vacated. On June 30, 2017, Debtor obtained a discharge. On August 11, 2017, the Court approved Trustee's application to employ Neiman Realty as real estate broker.

On October 2, 2017, Trustee filed a motion for turnover of property. Trustee states that he e-mailed Debtor's counsel on September 20, 2017 inquiring regarding access to certain real property located at 1254 Hardt Street, San Bernardino, CA 92408 (the "Property"). Trustee states that, in response, he received an e-mail stating that the employment application was not properly served, and that Debtor's wife's community property interest in the Property was not part of the bankruptcy estate. Based upon this response, Trustee requests authorization to put a lockbox on the Property.

On October 19, 2017, Debtor filed a late objection to Trustee's motion.

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Chapter 7

DISCUSSION

11 U.S.C. § 542(a) states:

Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

The standard for a turnover action is well established:

"To prevail in a turnover action under § 542, the party seeking turnover must establish (1) that the property is or was in the possession, custody or control of an entity during the pendency of the case, (2) that the property may be used by the trustee in accordance with § 363 or exempted by the debtor under § 522; and (3) that the property has more than inconsequential value or benefit to the estate."

In re Bailey, 380 B.R. 486, 490 (B.A.P. 6th Cir. 2008); *see also In re Newman*, 487 B.R. 193 (B.A.P. 9th Cir. 2013). Here, it is clear that Debtor is in possession of the property, and Debtor has in fact exempted the property in part. The last prong is less than clear from the evidence before the Court. Debtor has claimed an exemption of \$20,000 in the property and identified a secured claim in the amount of \$93,000. Debtor interest in the Property is identified in Schedules A, C, and D, as \$110,339, \$123,000, and \$145,000 respectively. Given the assertions in Trustee's motion, it is unclear if that amount reflects only Debtor's interest in the property or instead reflects the interests of Debtor and his wife.

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In any event, the most accurate determination of the value of an asset is established through marketing the asset. While the evidence before the Court does not conclusively establish that the Property has consequential value to the estate, there appears to be sufficient equity to warrant a sale. Therefore, the Court is inclined to grant Trustee's request.

The exact nature of Trustee's request is unclear. In his conclusion, Trustee requests "access" and "cooperation." In the motion, Trustee provides more detail, however, that detail is not abundantly clear. While the Court is inclined to issue an order granting Trustee's motion, further discussion about the contents of that order is required.

TENTATIVE RULING

The Court is inclined to GRANT the motion to allow Trustee sufficient access to market the property. Parties to further discuss details of the access requested.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ariel A. Flores

Represented By
Stefan R Pancer

Movant(s):

Larry D Simons (TR)

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

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6:17-11834 David Leroy Norwood and Carol Ann Norwood

Chapter 7

#19.00 Motion For Sale of Property of the Estate under Section 363(b) - No Fee Subject to Overbids, Combined With Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; Granting Related Relief

EH__

Docket 29

Tentative Ruling:

10/25/17

BACKGROUND

On March 9, 2017, David & Carol Norwood ("Debtors") filed a Chapter 7 voluntary petition. On July 12, 2017, the Court approved Trustee's application to employ Shulman Hodges & Bastian as counsel. On August 14, 2017, Debtors received a discharge.

On October 4, 2017, Trustee filed a motion for sale of property of the estate under Section 363(b). Trustee proposes to sell 10,000 shares (the "Shares") in a privately held penny stock company called Shades Unlimited back to Shades Unlimited for \$37,500.

DISCUSSION

I. Sale of Estate Property

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11 U.S.C. § 363(b)(1) allows a trustee to sell property of the estate outside of the ordinary course, after notice and a hearing. A sale pursuant to § 363(b) requires a demonstration that the sale has a valid business justification. *In re 240 North Brand Partners, Ltd.*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996). "In approving any sale outside the ordinary course of business, the court must not only articulate a sufficient business reason for the sale, it must further find it is in the best interest of the estate, i.e. it is fair and reasonable, that it has been given adequate marketing, that it has been negotiated and proposed in good faith, that the purchaser is proceeding in good faith, and that it is an "arms-length" transaction." *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal.).

Here, the unique nature of the asset to be sold renders makes a § 363(b) analysis implausible. Trustee concedes that there was no attempt to market the Shares, and that no appraisal of the shares was undertaken. The only evidence in the motion relating to the value of the shares is that Debtors purchased the Shares in 1992 for \$10,000.¹

Nevertheless, Trustee has notified creditors of the sale, has posted the sale on the Court's website, and has opened up the sale to potential overbids. These actions appear appropriate and adequate for the circumstances. Furthermore, given that general unsecured claims presently total \$27,281.24, it would appear that an increase in sale price may result in a surplus accruing to Debtors, who have been notified of the sale. Therefore, the Court finds that Trustee has articulated an adequate business reason for the sale.

II. *14-Day Stay*

Fed. R. Bankr. P. Rule 6004(h) states: "An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Court deems the absence of objections to be consent to the relief requested, pursuant to Local Rule 9013-(1)(h), and, therefore, will waive the stay of Rule 6004(h).

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III. *Overbid Procedures*

The Court has reviewed the proposed overbid procedures and finds the procedures to be reasonable. *See, e.g., In re Fridman*, 2016 WL 3961303 at *8 (B.A.P. 9th Cir. 2016) (reviewing overbid procedures for reasonableness).

IV. *Miscellaneous*

The Court has reviewed the remainder of Trustee's miscellaneous requests, including for a determination that the buyer is a good faith purchaser under § 363(m). The Court is inclined to grant all requests,

TENTATIVE RULING

The Court is inclined to GRANT the motion in its entirety.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

David Leroy Norwood

Represented By
Jenny L Doling

Joint Debtor(s):

Carol Ann Norwood

Represented By
Jenny L Doling

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Movant(s):

Karl T Anderson (TR)

Represented By
Brandon J Iskander
Leonard M Shulman

Trustee(s):

Karl T Anderson (TR)

Represented By
Brandon J Iskander
Leonard M Shulman

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6:17-13563 Paula Ayon

Chapter 7

#20.00 Motion to Extend Time to file Reaffirmation Agreement

EH__

Docket 19

Tentative Ruling:

10/25/17

BACKGROUND

On April 28, 2017, Paula Ayon ("Debtor") filed a Chapter 7 voluntary petition. On August 7, 2017, Debtor obtained a discharge, and the case was closed the following day.

On September 27, 2017, the case was reopened. On October 4, 2017, Ally Bank filed a motion to extend time to file a reaffirmation agreement.

DISCUSSION

Fed. R. Bankr. P. Rule 4008(a) states:

A reaffirmation agreement shall be filed no later than 60 days after the first date set for the meeting of creditors under §341(a) of the Code. The reaffirmation agreement shall be accompanied by a cover sheet, prepared as prescribed by the appropriate Official Form. The court may, at any time and in

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its discretion, enlarge the time to file a reaffirmation agreement.

Here, the initial meeting of creditors was scheduled for June 2, 2017, making the deadline to file a reaffirmation agreement August 1, 2017.

11 U.S.C. § 524(c)(1), however, states:

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if –

(1) such agreement was made before the granting of the discharge under section 727, 1141, 1228, or 1328 of this title;

The Court's ability to extend the time to file a reaffirmation agreement, pursuant to Rule 4008(a), is circumscribed by § 524(c)(1), which renders a reaffirmation non-enforceable if entered into after discharge. Fed. R. Bankr. P. Rule 4004(c)(1)(J) provides for an automatic delay of a discharge if a motion to enlarge the time to file a reaffirmation agreement is pending. The Federal Rules of Bankruptcy Procedure are subordinate to the Bankruptcy Code, and Rule 4008(a) must be interpreted as allowing the Court to extend the deadline stated in that rule, not the directive in the Bankruptcy Code that reaffirmation agreements must be entered into before discharge. Furthermore, if Rule 4008(a) were to be interpreted to permit a court to approve a reaffirmation agreement entered into after discharge, Rule 4004(c)(1)(J) would be nonsensical.

TENTATIVE RULING

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CONT... Paula Ayon

Chapter 7

The Court will DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Paula Ayon

Represented By
Michael Smith

Movant(s):

Ally Bank

Represented By
Adam N Barasch
Brenda Groschen

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, October 25, 2017

Hearing Room 303

11:00 AM

6:16-15813 John E. Tackett and Ellen O. Tackett

Chapter 7

#21.00 OSC why William Ward should not be sanctioned for failure to pay attorneys' fees and costs in connection with relief from stay hearing

EH__

Docket 52

***** VACATED *** REASON: ORDER ENTERED 10/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John E. Tackett

Represented By
Stefan R Pancer

Joint Debtor(s):

Ellen O. Tackett

Represented By
Stefan R Pancer

Trustee(s):

Steven M Speier (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, October 25, 2017

Hearing Room 303

2:00 PM

6:15-14230 Home Security Stores, Inc.

Chapter 7

Adv#: 6:17-01085 PRINGLE v. Winn et al

#22.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01085. Complaint by JOHN P PRINGLE against Ralph Winn. (Charge To Estate - \$350.00). and other Defendants including DOES 1-25 Nature of Suit: 12 - Recovery of money/property - 547 preference, 13-Recovery of money/property - 548 fraudulent transfer, 21-Validity, priority or extent of lien or other interest in property, 14 - Recovery of money/property - other, 91- Declaratory judgment)

From: 7/12/17, 8/23/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Home Security Stores, Inc.

Represented By
Winfield S Payne III

Defendant(s):

Steven B Knoch

Represented By
Seth W Wiener

Stacy Winn

Represented By
Douglas A Plazak

Natalia V Knoch

Represented By
Seth W Wiener

Ralph Winn

Represented By
Douglas A Plazak

Sterling Security Service, Inc.

Represented By

**United States Bankruptcy Court
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CONT... Home Security Stores, Inc.

Chapter 7

Seth W Wiener

Plaintiff(s):

JOHN P PRINGLE

Represented By
Charity J Miller

Trustee(s):

John P Pringle (TR)

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, October 25, 2017

Hearing Room 303

2:00 PM

6:16-13091 Luz Ampelia Castro

Chapter 7

Adv#: 6:17-01003 Cisneros v. Castro, Jr.

#23.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01003. Complaint by Arturo M. Cisneros against Enrique Castro Jr.. (Charge To Estate). (Attachments: # 1 Adversary Coversheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer))
SETTLED

From: 3/8/17, 7/12/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 11/29/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luz Ampelia Castro

Represented By
George P Hobson Jr

Defendant(s):

Enrique Castro Jr.

Represented By
C Scott Rudibaugh

Plaintiff(s):

Arturo M. Cisneros

Represented By
Carmela Pagay
Todd A Frealy

Trustee(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy
Carmela Pagay

**United States Bankruptcy Court
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Wednesday, October 25, 2017

Hearing Room 303

2:00 PM

6:16-19799 Jaison Vally Surace

Chapter 7

Adv#: 6:16-01295 Abbasi v. Surace et al

#24.00 CONT Status Conference Re: Complaint by Setareh Abbasi, Bruce Dannemeyer, Jaison Vally Surace against Jaison Vally Surace, Walie Qadir, Marym Qadir. false pretenses, false representation, actual fraud, 67 - Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 13 - Recovery of money/property - 548 fraudulent transfer, 91 - Declaratory judgment, 02 - Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

From: 2/15/17, 5/17/17, 6/7/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Defendant(s):

Marym Qadir

Represented By
Batkhand Zoljargal

Walie Qadir

Represented By
Batkhand Zoljargal

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Plaintiff(s):

Setareh Abbasi

Represented By
Bruce Dannemeyer

**United States Bankruptcy Court
Central District of California
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Courtroom 303 Calendar**

Wednesday, October 25, 2017

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2:00 PM

CONT... Jaison Vally Surace

Bruce Dannemeyer

Chapter 7

Trustee(s):

John P Pringle (TR)

Represented By
Todd A Frealy
Carmela Pagay

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Central District of California
Riverside
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Wednesday, October 25, 2017

Hearing Room 303

2:00 PM

6:16-13644 Yolanda Yvette Tyes

Chapter 7

Adv#: 6:16-01200 Chicago Title Insurance Company v. Tyes

#25.00 CONT Status Conference Re: Complaint by Chicago Title Insurance Company against Yolanda Yvette Tyes. (d),(e), 62 - Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud

From: 10/19/16, 11/9/16, 1/11/17, 6/21/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Yolanda Yvette Tyes Pro Se

Defendant(s):

Yolanda Yvette Tyes Pro Se

Plaintiff(s):

Chicago Title Insurance Company Represented By
Charles C H Wu
Thanh-Thuy T Luong
Vikram M Reddy

Trustee(s):

Larry D Simons (TR) Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, October 25, 2017

Hearing Room 303

2:00 PM

6:17-13012 Issa M Musharbash

Chapter 7

Adv#: 6:17-01138 Musharbash et al v. Musharbbash et al

#26.00 Motion Of Plaintiffs For Order Granting Leave To File Amended Adversary
Complaint

EH__

Docket 9

Tentative Ruling:

10/25/17

BACKGROUND

On April 11, 2017, Issa & Amal Musharbash ("Debtors") filed a Chapter 7 voluntary petition. On July 17, 2017, Phillip & Violette Musharbash ("Plaintiffs") filed a non-dischargeability complaint against Debtors. On August 16, 2017, Debtors filed an answer. On September 20, 2017, an initial status conference was held.

On September 29, 2017, Plaintiffs filed a motion for leave to file an amended complaint.

DISCUSSION

Fed. R. Civ. P. Rule 15(a)(1)-(2) states:

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CONT...

Issa M Musharbash

Chapter 7

- (1) A party may amend its pleading once as a matter of course within:
 - (A) 21 days after serving it, or
 - (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f) whichever is earlier
- (2) In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Here, Debtors' answer was filed on August 12, 2017, and, therefore, the standard of Fed. R. Civ. P. Rule 15(a)(2) applies.

As is noted by Plaintiffs, "leave to amend should be granted unless amendment would cause prejudice to the opposing party, is sought in bad faith, is futile, or creates undue delay." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992).

Here, Plaintiffs timely moved to amend their complaint after the initial status conference. There is no indication of bad faith on the part of Plaintiffs and Debtors have not argued that leave to amend would be prejudicial. The Federal Rules of Civil Procedure instruct the Court to "freely give leave when justice so requires." Here, in litigation between two *pro se* parties, when Plaintiff has promptly moved to amend the complaint early in litigation, and soon after learning of the pleading's deficiency, justice requires leave to amend.

TENTATIVE RULING

The Court is inclined to GRANT the motion.

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CONT... Issa M Musharbash

Chapter 7

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Issa M Musharbash

Represented By
Brian J Soo-Hoo

Defendant(s):

Amal Musharbbash

Pro Se

Issa M Musharbbash

Pro Se

Joint Debtor(s):

Amal Issa Musharbash

Represented By
Brian J Soo-Hoo

Movant(s):

Violette Musharbash

Pro Se

Phillip Musharbash

Pro Se

Plaintiff(s):

Violette Musharbash

Pro Se

Phillip Musharbash

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, October 25, 2017

Hearing Room 303

2:00 PM

6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#27.00 Trustee's Motion for Summary Judgment or, Alternatively, Partial Summary Judgment

EH__

Docket 90

Tentative Ruling:

10/25/17

PROCEDURAL BACKGROUND

On December 18, 2013, Nabeel Slaieh ("Debtor") filed a Chapter 7 voluntary petition. On August 31, 2016, Trustee filed a complaint against Debtor and Joanne Fraleigh (collectively, "Defendants") (Joanne Fraleigh individually, "Fraleigh") for avoidance and recovery of an unauthorized post-petition transfer. On December 16, 2016, Defendants filed an answer, as well as a counter-claim against Trustee and various of Trustee's professionals (collectively, "Counter-Defendants"). On January 17, 2017, Counter-Defendants filed a motion to dismiss the counter-claim, which was granted on March 6, 2017. Prior to entry of the order, Debtor filed another, more limited counter-claim, on March 3, 2017. On March 24, 2017, the remaining Counter-Defendants filed another motion to dismiss, and that motion was granted on June 28, 2017.

On September 13, 2017, Trustee filed a motion for summary judgment. On October 2, 2017, Debtor filed his opposition. On October 11, 2017, Trustee filed a reply.

FACTUAL BACKGROUND

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CONT... Nabeel Slaieh

Chapter 7

On May 7, 2016, while Debtor's bankruptcy case was still proceeding, and with a sale motion of the Trustee pending¹, Debtor transferred his interest in certain real property located at 40834 Baccarat Rd., Temecula, California (the "Property") to Fraleigh via grant deed (the "Grant Deed").

DISCUSSION

Fed. R. Civ. P. Rule 56(a), incorporated into bankruptcy proceedings by Fed. R. Bankr. Rule 7056, states:

A party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

Here, Trustee's complaint contains a single cause of action: avoidance, recovery, and preservation of an unauthorized post-petition transfer pursuant to 11 U.S.C. §§ 549-551. 11 U.S.C. § 549(a) states:

- (a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate –
 - (1) That occurs after the commencement of the case; and
 - (2) (A) that is authorized only under section 303(f) or 542(c) of this title;or

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CONT... Nabeel Slaieh

Chapter 7

(B) that is not authorized under this title or by the court.

Fed. R. Bankr. P. Rule 6001 states: "Any entity asserting the validity of a transfer under § 549 of the Code shall have the burden of proof."

As a preliminary matter, in order for a transfer to be avoidable, there must be: (1) a transfer of (2) property of the estate that (3) occurs after the commencement of the case. 11 U.S.C. § 101(54) defines a "transfer" expansively. Here, the Grant Deed constitutes a transfer of property pursuant to the Code. Likewise, the Property was clearly property of the estate at the time of the transfer – Debtor listed himself as sole owner of the Property on Schedule A and no meaningful argument has made that the Property was not property of the estate.² Finally, the face of the Grant Deed indicates that the transfer occurred on May 7, 2016 – after the commencement of the case. Therefore, it is abundantly clear that the preliminary requirements for an avoidance action under § 549 have been satisfied.

Furthermore, the Grant Deed was not made pursuant to court or Code authorization; no argument has been presented asserting that court authorization was obtained, or that the Grant Deed was authorized by the Code. Additionally, the exceptions outlined in § 549(b)-(c) are inapplicable because: (1) the case is not an involuntary case; and (2) Fraleigh clearly had knowledge of the commencement of the case because she was ordered to appear, and did appear, at a Rule 2004 examination in 2014, more than a year and a half prior to the execution of the Grant Deed.³

Instead of advancing an argument relating to the above factors, Debtor has provided evidence that Fraleigh transferred the property back to Debtor, via a second grant deed (the "Second Transfer"), on June 16, 2017. Debtor appears to argue that Trustee's § 549 action is now moot because of the Second Transfer. In Trustee's reply, Trustee argues that the Second Transfer does not change the fact that the Grant Deed is avoidable, and that absent a judgment, Debtor may attempt to argue that the Property is post-petition property, and, therefore, not property of the estate. It is clear that the Second Transfer does not nullify the Grant Deed and that the Grant Deed, despite the

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CONT... Nabeel Slaieh

Chapter 7

Second Transfer, still meets the requirements for avoidance pursuant to § 549.

11 U.S.C. § 550(a)(1) provides that the Trustee may recover, for the benefit of the estate, from the initial transferee of the transfer avoided. Here, Fraleigh is initial transferee of the Grant Deed, and, therefore, the Property can be recovered.⁴ Finally, 11 U.S.C. § 551 provides that property recovered is preserved for the benefit of the estate.

Trustee has also requested summary judgment on Defendants' three affirmative defenses. Affirmative defenses are not separately litigated, and it is not clear what Trustee is requesting. Trustee must overcome Defendants' affirmative defenses, and, for the reasons outlined above, such a showing has been made. More specifically, Defendants' three affirmative defenses are: (1) failure to state a claim; (2) lack of subject matter jurisdiction in removing Fraleigh's state court action; and (3) the bona fide purchaser exception. Regarding (1), Trustee has clearly proven each element of a § 549(a) avoidance action. Defendants' second affirmative defense is irrelevant to this action. Regarding (3), as outlined above, the evidence clearly demonstrates that Fraleigh had knowledge of the commencement of the case more than a year and a half prior to the execution of the Grant Deed. Therefore, Defendants' affirmative defenses have been overcome.

Trustee has also presented eight evidentiary objections to the declaration of Debtor's counsel. The Court declines to rule on the evidentiary objections, because the subject declaration simply does not affect the Court's ruling on the matter.

TENTATIVE RULING

The Court is inclined to GRANT the motion and issue a judgment AVOIDING the Grant Deed.

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CONT... Nabeel Slaieh

Chapter 7

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

David A. Wood

Pro Se

Joanne Fraleigh

Represented By
George A Saba

Nabeel Naiem Slaieh

Represented By
George A Saba

Movant(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

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6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:14-01081 Albrecht v. Slaieh

#28.00 CONT Status Conference RE: [1] Adversary case 6:14-ap-01081. Complaint by W.E. Jon Albrecht against Nabeel Slaieh. willful and malicious injury))

HOLDING DATE

From: 10/19/16, 12/14/16, 2/15/17, 3/29/17, 6/7/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

Nabeel Slaieh

Represented By
Stephen B Mashney
Bruce A Boice
George A Saba

Plaintiff(s):

W E Jon Albrecht

Represented By
William L Miltner
Robert C Harvey

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood

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CONT...

Nabeel Slaieh

Matthew Grimshaw

Chapter 7

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Hearing Room 303

3:00 PM

6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:09-01235 DIAMOND v. Empire Partners, Inc., a California Corporation et

#29.00 CONT Status Conference re complaint
HOLDING DATE

From: 3/6/13, 6/5/13, 9/11/13, 11/13/13,12/18/13, 2/5/14, 3/12/14, 4/9/14,
4/16/14, 5/21/14, 8/27/14, 8/28/14, 9/10/14, 9/29/14, 11/10/14, 11/19/14,
1/21/15, 1/28/15, 2/19/15, 3/24/15, 5/28/15, 6/23/15, 8/12/15, 9/18/15, 10/6/15,
12/8/15, 1/20/16, 2/18/16, 3/23/16, 4/5/16, 4/13/16, 4/22/16, 6/6/16, 7/25/16,
10/3/16, 11/14/16, 1/23/17, 2/27/17, 4/24/17, 6/26/17, 8/2/17

EH____

Docket 1

Tentative Ruling:

Party Information

Debtor(s):

Empire Land, LLC

Represented By
James Stang
Robert M Saunders
Michael I Gottfried
----- O'melveny & Myers
Dean A Ziehl
Jonathan A Loeb
P Sabin Willett
Richard K Diamond (TR)
Jeffrey Rosenfeld

Defendant(s):

DOES 1 through 100, inclusive

Pro Se

Empire Partners, Inc., a California

Represented By
David Loughnot

**United States Bankruptcy Court
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CONT... Empire Land, LLC

Chapter 7

Jonathan A Loeb
Jeffrey Rosenfeld

Plaintiff(s):

RICHARD K. DIAMOND

Represented By
Richard S Berger
Michael I Gottfried
Aleksandra Zimonjic
Monica Rieder
John P Reitman
Peter M Bransten
Cynthia M Cohen
Roye Zur

Trustee(s):

Richard K Diamond (TR)

Represented By
Michael I Gottfried
Richard S Berger
Rodger M Landau
Richard K Diamond
Peter M Bransten
Aleksandra Zimonjic
Monica Rieder
Lisa N Nobles
Peter J Gurfein
Paul Hastings
Roye Zur
Amy Evans
Best Best & Krieger
Franklin C Adams
Thomas J Eastmond

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6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:10-01319 DIAMOND v. Empire Partners, Inc., a California Corporation et

#30.00 CONT Status Conference re complaint
HOLDING DATE

From: 3/6/13, 6/5/13, 9/11/13, 11/13/13, 12/18/13, 2/5/14, 3/12/14, 4/9/14,
4/16/14, 5/21/14, 8/27/14, 8/28/14, 9/10/14, 9/29/14, 11/10/14, 11/19/14,
01/21/15, 1/28/15, 2/19/15, 3/24/15, 5/28/15, 6/23/15, 8/12/15, 9/18/15, 10/6/15,
12/8/15, 1/20/16, 2/18/16, 3/23/16, 4/5/16, 4/13/16, 4/22/16, 6/6/16, 7/25/16,
10/3/16, 11/14/16, 1/23/17, 2/27/17, 4/24/17, 8/2/17

From: 6/26/17

EH____

Docket 1

Tentative Ruling:

Party Information

Debtor(s):

Empire Land, LLC

Represented By

James Stang
Robert M Saunders
Michael I Gottfried
----- O'melveny & Myers
Dean A Ziehl
Jonathan A Loeb
P Sabin Willett
Richard K Diamond (TR)
Jeffrey Rosenfeld

Defendant(s):

Paul Roman

Represented By

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CONT... Empire Land, LLC

Chapter 7

Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

O'Melveny & Myers, LLP

Represented By
Howard Steinberg
P Sabin Willett

Peter T. Healy

Represented By
Howard Steinberg
P Sabin Willett

Neil M Miller

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

Empire Partners, Inc., a California

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

James P Previti

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

Larry Day

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

Plaintiff(s):

RICHARD K DIAMOND

Represented By
Richard S Berger
Peter M Bransten
John P Reitman
Michael I Gottfried
Aleksandra Zimonjic

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CONT... Empire Land, LLC

Chapter 7

Monica Rieder
Cynthia M Cohen
Roye Zur

Trustee(s):

Richard K Diamond (TR)

Represented By
Michael I Gottfried
Richard S Berger
Rodger M Landau
Richard K Diamond
Peter M Bransten
Aleksandra Zimonjic
Monica Rieder
Lisa N Nobles
Peter J Gurfein
Paul Hastings
Roye Zur
Amy Evans
Best Best & Krieger
Franklin C Adams
Thomas J Eastmond

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6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:10-01329 DIAMOND v. Empire Partners, Inc., a California Corporation et

#31.00 CONT Status Conference re complaint
(Defendant - Empire Partners, Inc) HOLDING DATE

From: 3/6/13, 6/5/13, 9/11/13, 11/13/13,12/18/13, 2/5/14, 3/12/14, 4/9/14,
4/16/14, 5/21/14, 8/27/14, 8/28/14, 9/10/14, 9/29/14, 11/10/14, 11/19/14,
1/21/15, 1/28/15, 2/19/15, 3/24/15, 5/28/15, 6/23/15, 8/12/15, 9/18/15, 10/6/15,
12/8/15, 1/20/16, 2/18/16, 3/23/16, 4/5/16, 4/13/16, 4/22/16, 6/6/16, 7/25/16,
10/3/16, 11/14/16, 1/23/17, 2/27/17, 4/24/17, 6/26/17, 8/2/17

EH____

Docket 1

Tentative Ruling:

Party Information

Debtor(s):

Empire Land, LLC

Represented By
James Stang
Robert M Saunders
Michael I Gottfried
----- O'melveny & Myers
Dean A Ziehl
Jonathan A Loeb
P Sabin Willett
Richard K Diamond (TR)
Jeffrey Rosenfeld

Defendant(s):

Previti Realty Fund, L.P.

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

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CONT... Empire Land, LLC

Chapter 7

The James Previti Family Trust

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

Empire Partners, Inc., a California

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

James P Previti

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

Plaintiff(s):

RICHARD K DIAMOND

Represented By
Richard S Berger
Michael I Gottfried
Aleksandra Zimonjic
Monica Rieder
John P Reitman
Peter M Bransten
Cynthia M Cohen
Roye Zur

Trustee(s):

Richard K Diamond (TR)

Represented By
Michael I Gottfried
Richard S Berger
Rodger M Landau
Richard K Diamond
Peter M Bransten
Aleksandra Zimonjic
Monica Rieder
Lisa N Nobles
Peter J Gurfein
Paul Hastings
Roye Zur
Amy Evans

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CONT...

Empire Land, LLC

Best Best & Krieger
Franklin C Adams
Thomas J Eastmond

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:30 PM

6:13-19597 James Randal Kenley and Kathern Elizabeth Kenley

Chapter 13

#1.00 Motion to vacate dismissal Order and Reinstate Chapter 13 Bankruptcy

EH__

Docket 65

Tentative Ruling:

10/26/17

BACKGROUND

On May 30, 2013, James & Kathern Kenley ("Debtors") filed a Chapter 13 voluntary petition. On September 17, 2013, Debtors' Chapter 13 plan was confirmed.

On June 13, 2017, Trustee filed a motion to dismiss for failure to provide tax returns/receipts. Debtors did not file an opposition, Trustee's motion was granted, and the case was dismissed on July 25, 2017.

Debtors motion asserts that copies of the tax returns were faxed to Trustee on June 19, 2017, and were faxed again, although to the wrong number, on July 24, 2017.

Trustee has approves vacating dismissal, conditioned on Debtors making the Chapter 13 payments that came due when the case was dismissed, totaling \$3,618.34.

DISCUSSION

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Chapter 13

Fed. R. Bankr. P. Rule 9024, incorporating Fed. R. Civ. P. Rule 60(b)(1), provides for relief from an order for, among other things, "mistake, inadvertence, surprise, or excusable neglect." Debtors state that the tax returns were faxed to Trustee shortly after the Trustee filed a motion to dismiss, and that Debtors attempted to fax the returns again on July 24, 2017.

Given the conditional approval of the Trustee and the evidence submitted by Debtor, the Court finds that the requested relief is proper assuming that the condition has been satisfied.

TENTATIVE RULING

The Court is inclined to GRANT the motion in accordance with the terms in Trustee's comments.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

James Randal Kenley

Represented By
Robert J Spitz

Joint Debtor(s):

Kathern Elizabeth Kenley

Represented By
Robert J Spitz

Movant(s):

Kathern Elizabeth Kenley

Represented By
Robert J Spitz

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James Randal Kenley

Represented By
Robert J Spitz

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

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6:16-17911 Elizabeth T Baker

Chapter 7

#2.00 CONT Amended Motion to Vacate Order that Converted Case to Chapter 7 from Chapter 13

From: 9/27/17, 9/28/17

Also #3

EH__

Docket 98

Tentative Ruling:

09/28/2017

BACKGROUND

On August 5, 2016, Elizabeth Baker ("Debtor") filed her petition for chapter 13 relief. The Debtor's chapter 13 plan was confirmed on October 26, 2016. Rod Danielson was the duly appointed chapter 13 trustee ("Trustee"). On June 9, 2017, the Debtor filed a motion to convert the case from a chapter 13 to a case under chapter 7. The case was converted by the Court on the same date, pursuant to §1307(a) (the "Conversion Order").

On July 11, 2017, the Court issued to the Debtor a Notice of non-entitlement to discharge pursuant to 11 U.S.C. § 727(a)(8) or (9) because the Debtor had received a chapter 7 discharge in March 2011.

On July 24, 2017, the Debtor filed a motion to reconvert the case to a case under chapter 13. At the hearing on the Motion to Reconvert, the Court noted that courts are divided regarding a Debtor's ability to reconvert and, separately, noted that even assuming the Court was convinced that reconversion was authorized under §706, that the Debtor's filing history and the absence of a change in financial circumstances weighed against conversion. The Court, however, permitted the Debtor an opportunity to file a motion to seek to vacate the conversion order.

On September 6, 2017, the Debtor filed a motion to vacate the Conversion

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CONT... Elizabeth T Baker

Chapter 7

Order ("Motion"). The Motion includes a declaration by the Debtor's counsel in which she concedes that in filing the motion to convert, she did not take into account the Debtor's prior filings and as a result did not realize that the Debtor would not be entitled to a discharge in a chapter 7 case.

DISCUSSION

The Court may find grounds to vacate the Conversion Order based on the Debtor's counsel's declaration and a finding that "excusable neglect" resulted in the conversion. However, the Court is concerned that the Debtor is not able to continue making payments in a reconverted chapter 13. Specifically, when the Debtor's case was converted, a motion to dismiss was already pending for a \$576 delinquency as of May 31, 2017. Additionally, on June 13, 2017 (presumably before realizing the case had been converted), the Trustee filed a Motion to Dismiss the chapter 13 case for failure to submit 2016 Federal and State Tax Returns and any corresponding refunds due to the Trustee.

TENTATIVE RULING

The Court is inclined to GRANT the Motion conditioned on the Debtor curing the issues raised by the Trustee in his prior motions to dismiss and in the Debtor's counsel holding sufficient certified funds to bring the plan current.

However, the Court notes that the Motion was not served on any of the Debtor's creditors. As such, the Court is inclined to CONTINUE the hearing for proper service on creditors and for Debtor to file a supplemental declaration indicating it is prepared to cure the issues outlined herein.

APPEARANCES REQUIRED.

09/28/2017

BACKGROUND

On August 5, 2016, Elizabeth Baker ("Debtor") filed her petition for chapter 13 relief. The Debtor's chapter 13 plan was confirmed on October 26, 2016. Rod Danielson was the duly appointed chapter 13 trustee ("Trustee"). On June 9, 2017, the Debtor filed a motion to convert the case from a chapter 13 to a case under chapter 7. The case was converted by the Court on the same date, pursuant to §1307(a) (the "Conversion Order").

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CONT... Elizabeth T Baker

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On July 11, 2017, the Court issued to the Debtor a Notice of non-entitlement to discharge pursuant to 11 U.S.C. § 727(a)(8) or (9) because the Debtor had received a chapter 7 discharge in March 2011.

On July 24, 2017, the Debtor filed a motion to reconvert the case to a case under chapter 13. At the hearing on the Motion to Reconvert, the Court noted that courts are divided regarding a Debtor's ability to reconvert and, separately, noted that even assuming the Court was convinced that reconversion was authorized under §706, that the Debtor's filing history and the absence of a change in financial circumstances weighed against conversion. The Court, however, permitted the Debtor an opportunity to file a motion to seek to vacate the conversion order.

On September 6, 2017, the Debtor filed a motion to vacate the Conversion Order ("Motion"). The Motion includes a declaration by the Debtor's counsel in which she concedes that in filing the motion to convert, she did not take into account the Debtor's prior filings and as a result did not realize that the Debtor would not be entitled to a discharge in a chapter 7 case.

DISCUSSION

The Court may find grounds to vacate the Conversion Order based on the Debtor's counsel's declaration and a finding that "excusable neglect" resulted in the conversion. However, the Court is concerned that the Debtor is not able to continue making payments in a reconverted chapter 13. Specifically, when the Debtor's case was converted, a motion to dismiss was already pending for a \$576 delinquency as of May 31, 2017. Additionally, on June 13, 2017 (presumably before realizing the case had been converted), the Trustee filed a Motion to Dismiss the chapter 13 case for failure to submit 2016 Federal and State Tax Returns and any corresponding refunds due to the Trustee.

TENTATIVE RULING

The Court is inclined to GRANT the Motion conditioned on the Debtor curing the issues raised by the Trustee in his prior motions to dismiss and in the Debtor's counsel holding sufficient certified funds to bring the plan current.

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CONT... Elizabeth T Baker

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However, the Court notes that the Motion was not served on any of the Debtor's creditors. As such, the Court is inclined to CONTINUE the hearing for proper service on creditors and for Debtor to file a supplemental declaration indicating it is prepared to cure the issues outlined herein.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Elizabeth T Baker

Represented By
Nancy Korompis

Movant(s):

Elizabeth T Baker

Represented By
Nancy Korompis

Trustee(s):

John P Pringle (TR)

Pro Se

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6:16-17911 Elizabeth T Baker

Chapter 7

#3.00 CONT Motion to Convert Case From Chapter 7 to Chapter 13
(Holding Date)

From: 8/23/17, 9/27/17, 9/28/17

Also #2

EH__

Docket 92

Tentative Ruling:

8/23/17

BACKGROUND

Debtor obtained a discharge in a Chapter 7 case filed on November 30, 2010. Between February 14, 2013 and September 18, 2015, Debtor filed four Chapter 13 cases, all of which were dismissed within one year.

On August 5, 2016, Elizabeth Baker ("Debtor") filed a Chapter 13 voluntary petition. On October 26, 2016, Debtor's Chapter 13 plan was confirmed. On June 9, 2017, unaware that she was ineligible for a Chapter 7 discharge, Debtor converted her case to Chapter 7. On July 24, 2017, Debtor filed a motion to reconvert to Chapter 13.

DISCUSSION

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Chapter 7

11 U.S.C. § 706(a) states: "The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title." Here, Debtor's case was previously converted under § 1307.

"Courts are divided as to whether the debtor can re-convert a case that has been previously converted." Ginsberg & Martin on Bankruptcy § 12.13[A] (5th ed. 2017-2); *see also In re Masterson*, 141 B.R. 84, 87 (Bankr. E.D. Pa. 1992) ("The courts appear to be evenly divided on the issue of whether a 'second conversion' of a case previously converted to Chapter 7 is *ever* permissible.") (collecting cases). The courts that have determined that § 706(a) bars subsequent reconversion have primarily relied upon the plain language of the statute, but have also considered the legislative history. *See In re Banks*, 252 B.R. 399, 400 (Bankr. E.D. Mich. 2000). One court has stated the following:

Unfortunately, for the debtor, the language of Section 706 clearly bars a debtor from converting a case from Chapter 7 to Chapter 13 more than once. Subsection (a) of that section states in relevant part that a "debtor may convert a case under this chapter to a case under Chapter 11 or 13 of this title at any time, if the case has not been converted under Section 1112 or 1307 of this title. The language of this statute is not discretionary. By its plain meaning it bars the debtor from this second attempt at conversion. Moreover, there is no case law supporting a discretionary right. At least one other bankruptcy court has arrived at this conclusion, *In re Bumpass*, 28 B.R. 597 (Bankr. S.D.N.Y. 1983), and this Court shares that view.

In re Nimai Kumar Ghosh, 38 B.R. 600, 603 (Bankr. E.D.N.Y. 1984) (footnote omitted).

As the court implicitly concluded in *Nimai Kumar Ghosh*, the phrase appears "if the case has not been converted" appears to modify the entirety of the first clause, not simple the language "at any time." The phrase "at any time" is not set off from the remainder of the clause in any fashion. Therefore, §706(a) is only applicable if the

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Chapter 7

case has not been converted previously. The remaining question is, if § 706(a) is inapplicable, can the Debtor resort to any other mechanism in order to convert her case?

Courts that have permitted a reconversion appear to fall into two categories. First, some courts appear to believe that, when § 706(a) is inapplicable, the default position is that the Court has discretion to allow conversion based on policy grounds. *See, e.g., In re Masterson*, 141 B.R. at 88. Other courts have turned to § 706(c). *See, e.g., Matter of Johnson*, 116 B.R. 224, 225 (Bankr. Idaho 1990); *In re Sensibaugh*, 9 B.R. 45, 46 (Bankr. E.D. Va. 1981). Section 706(c) states: "[t]he court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests or consents to such conversion." While the plain language of § 706(c) indicates that it operates as a restraint on the court's authority, not as a source of authority, courts that have utilized this provision appear to conclude that if the debtor consents to or requests conversion, the court has discretion to permit such conversion.

A third possibility is that a debtor could seek voluntary dismissal or conversion under § 707, consent to conversion, and allow the Court to determine whether dismissal or conversion was more appropriate in the circumstances. This approach would have the disadvantage of possibly resulting in dismissal of the case, but it would seem to solve the statutory interpretation issues encountered by the alternative approaches.

Nevertheless, the Court need not determine whether reconversion is permitted under § 706(a) because, if the Court were to conclude that reconversion is discretionary, Debtor has not demonstrated that the exercise of such discretion would be appropriate. Debtor has had four Chapter 13 cases dismissed in the previous five years. More importantly, at the time Debtor converted to Chapter 7, there was an outstanding motion to dismiss pending for failure to make plan payments. Debtor appears to have chosen to convert the case to Chapter 7 rather than resolve the Chapter 13 Trustee's pending motion to dismiss.

Given Debtor's history in bankruptcy, the absence of any legal argument in Debtor's motion, and the absence of any evidence suggesting a change in circumstances which would allow Debtor to be successful in a Chapter 13 proceeding, the reconversion of

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the case, even if the Court were to conclude that such reconversion was legally permissible, would be inappropriate.

TENTATIVE RULING

The Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Elizabeth T Baker

Represented By
Nancy Korompis

Movant(s):

Elizabeth T Baker

Represented By
Nancy Korompis

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:30 PM

6:17-11790 Larry Patrick Egan and Elizabeth Ann Egan

Chapter 13

#4.00 Motion to Disallow Claims # 10 First Valley Credit Union

EH__

Docket 28

Tentative Ruling:

10/26/17

Background:

On March 8, 2017, Larry & Elizabeth Egan ("Debtors") filed a Chapter 13 voluntary petition. On May 9, 2017, Debtors' Chapter 13 plan was confirmed.

On June 1, 2017, 1st Valley Credit Union ("Creditor") filed a proof of claim for an unsecured claim in the amount of \$8,780.14 ("Claim 10"). On September 19, 2017, Creditor amended Claim 10, increasing the amount to \$18,948.70. On September 21, 2017, Debtors filed an objection to Claim 10. On October 12, 2017, Creditor filed its opposition to Debtors' claim objection.

Debtors argue that the amendment is not properly an amendment to Claim 10, but rather a second, distinct claim held by Creditor which was filed late. Creditor attempts to argue that the timely filing of the original claim 10 constitutes an informal proof of claim that Creditor subsequently amended.

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Chapter 13

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. See *In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. See *Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

Analysis:

As is noted by Debtors, the claims bar date in this case was July 19, 2017, while

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Chapter 13

Creditor amended Claim 10 on September 19, 2017. Creditor argues that Claim 10 is an informal proof of claim, which it is entitled to amend, and, alternatively, that Debtors are not prejudiced by the late amendment.

Claim 10 is clearly not an informal proof of claim. It is a formal proof of claim for the amount of \$8,780.14. As is noted by Creditor, the Bankruptcy Appellate Panel has repeatedly laid out the elements required for an informal proof of claim: (1) presentment of a writing; (2) within the time for the filing of claims; (3) by or on behalf of the creditor; (4) bringing to the attention of the court; (5) the nature and *amount* of a claim asserted against the estate. *See, e.g., In re Gianulias*, 2013 WL 1397430 at *9 (B.A.P. 9th Cir. 2013).

Creditor's attempt to have this Court construe the proof of claim as a formal claim with regard to \$8,780.14 and an informal proof of claim with regard to other similar claims held by Creditor, while creative, is unpersuasive. It is simply impossible to conclude that the timely filed proof of claim brought to the attention of the Court the amount that Creditor would later assert against the estate. If the Court were to accept Creditor's invitation, then the timely filed Claim 10 would evidence a formal proof of claim for \$8,780.14 and an informal proof of claim for \$0.¹

Creditor's second argument is that it should be allowed to amend its timely filed proof of claim, and, in support of its argument, Creditor generally avers that Debtors cannot demonstrate legal prejudice. This argument, however, fails to address the fact that an amendment to a claim is only appropriate when such amendment clarifies the earlier filed claim; an "amendment" is not appropriate when the Creditor wishes to assert a second, different claim. *See generally In re Roberts Farms Inc.*, 980 F.2d 1248, 1252 (9th Cir. 1992); *see also In re Metro Transp. Co.*, 117 B.R. 143, 147 (Bankr. E.D. Pa. 1990) ("In other words, 'if a new claim is being asserted subsequent to the bar date, an objection to its filing must be sustained.'" (collecting cases.)

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Chapter 13

Here, the basis for Creditor's original proof of claim appears to be an installment loan dated May 23, 2016. The basis for the additional amount in Creditor's amended claim appears to be a credit card issued in 2005. These two claims are separate and distinct.

Tentative Ruling

The Court is inclined to SUSTAIN the objection, DISALLOWING the amendment to Claim 10.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Larry Patrick Egan

Represented By
Dana Travis

Joint Debtor(s):

Elizabeth Ann Egan

Represented By
Dana Travis

Movant(s):

Elizabeth Ann Egan

Represented By
Dana Travis

Larry Patrick Egan

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:17-14501 Julie Lynn Salazar

Chapter 13

#5.00 CONT Confirmation of Chapter 13 Plan

From: 7/6/17, 10/5/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julie Lynn Salazar

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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6:17-15978 Conchita C Ang

Chapter 13

#6.00 CONT Motion for Turnover of Property and: (I)To Enforce the Automatic Stay; (II)For an Order to Show Cause (OSC); (III)To Compel Compliance with the Court Order; (IV) For Sanctions

CASE DISMISSED 8/31/17

From: 9/14/17

EH__

Docket 14

Tentative Ruling:

09/14/2017

BACKGROUND

On July 18, 2017 ("Petition Date"), Conchita Ang ("Debtor") filed her petition for chapter 13 relief. The Debtor's petition commenced her second case pending within the same year as Case No. 16-16362, which was dismissed for abuse on October 12, 2016.

On August 18, 2017, the Debtor filed her Motion and Notice of Motion for Turnover of Property and: (I) To Enforce the Automatic Stay; (II) For an Order to Show Cause (OSC); (III) To Compel Compliance with the Court Order; (IV) For Sanctions ("Motion").

By her Motion, the Debtor asserts that Clear Recon Corp. and Wells Fargo Bank, N.A. violated the automatic stay by holding a foreclosure sale on the Petition Date. Although it is not clear from the Motion, the foreclosure appears to regard the property located at 2150 Horse Trail Drive in Redlands, CA 92373 (the "Property").

On August 31, 2017, Wells Fargo Bank and Clear Recon Corp. ("Respondents") filed their opposition to the Motion ("Opposition"). The Opposition asserts, in pertinent part, that: (1) a motion for relief from stay which included in rem

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CONT... Conchita C Ang

Chapter 13

relief was granted on May 18, 2017, (2) that order was recorded on August 10, 2017; and (3) that the Debtor has not asserted any actual damages.

DISCUSSION

As a threshold matter, the Court concurs that the Debtor's service of her Motion was deficient in that Respondents were not served in accordance with Rule 7004. Nevertheless, Respondents had the opportunity to file their opposition and did so timely. There appearing to be no prejudice to Respondents stemming from the deficiency in service, the Court is disinclined to deny the Motion on this basis.

The Motion seeks issuance of an OSC based on the alleged foreclosure of the Property in violation of the automatic stay.

"A 'willful violation' does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant **knew** of the automatic stay and that the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded."

Pinkstaff v. United States (In re Pinkstaff), 974 F.2d at 115 (quoting *Goichman v. Bloom* (In re Bloom), 875 F.2d 224, 227 (9th Cir.1989)) (emphasis added).

Here, the record indicates that the petition was filed at approximately 12:50 p.m. on July 18, 2017. The foreclosure sale was scheduled to begin at 1:00 p.m. that same day (although the Court notes that the Exhibit O which purportedly indicates the sale date and time was not filed with the Court). The Debtor's declaration is vague as to when she provided notice of the filing to Respondents. Her inauthenticated and inadmissible exhibits do not necessarily help her because they appear to indicate that notice was faxed by her at 1:04 p.m. at the earliest, which is after the sale began. Nevertheless, the foreclosure sale appears to be a technical violation of the stay.

In response to the Motion, the Respondents indicate an in rem order was entered in May 2017 by Judge Zurzolo. However, Respondents did not take appropriate steps to record the order in the county where the Property is located prior

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CONT... **Conchita C Ang**

Chapter 13

to the Petition Date (the In Rem Order was not recorded until August 10, 2017, postpetition), and as such the automatic stay was in place at the time of the foreclosure. Based on this failure by the Respondents, issuance of an OSC re: Violation of the Automatic Stay is appropriate because, notwithstanding that holding the foreclosure sale may not have been a willful violation (given the ambiguity surrounding whether Respondents received effective notice prior to holding the sale), the failure to restore title to the Property to the Debtor or to otherwise seek annulment likely constitutes a continuing violation of the stay which Respondents did not cure during the remaining pendency of the Debtor's case (Respondents do not acknowledge when they had notice of the bankruptcy but also do not dispute that they received notice at some point). *In re Wallace*, 2014 WL 1244792, at *6 (B.A.P. 9th Cir. Mar. 26, 2014)(discussing the interplay between an action for damages under 362(k) with related orders annulling the stay).

Based on the foregoing, the Court's tentative ruling is to issue an Order to Show Cause Why:

1. The foreclosure sale should not be set aside as a void act taken in violation of the automatic stay; and
2. Why the Debtor should not be awarded actual damages under either § 362(k) or § 105(a) to compensate her for damages stemming from the violation.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Conchita C Ang

Represented By
Richard W Snyder

Movant(s):

Conchita C Ang

Represented By
Richard W Snyder

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:30 PM

6:17-16978 Jaime Gomez Vivanco and Yuriria Vivanco

Chapter 13

#7.00 CONT Confirmation of Chapter 13 Plan

From: 9/28/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaime Gomez Vivanco

Represented By
Summer M Shaw
Jenny L Doling

Joint Debtor(s):

Yuriria Vivanco

Represented By
Summer M Shaw
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-17183 Jose E. Toledo and Antonia Toledo

Chapter 13

#8.00 Motion For Preliminary Injunction under In re Rinard, 451 B.R. 12 (Bankr. C.D. Cal. 2011)

EH__

Docket 24

*** VACATED *** REASON: CASE DISMISSED 10/5/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose E. Toledo

Represented By
Moises A Aviles

Joint Debtor(s):

Antonia Toledo

Represented By
Moises A Aviles

Movant(s):

Antonia Toledo

Represented By
Moises A Aviles
Moises A Aviles

Jose E. Toledo

Represented By
Moises A Aviles
Moises A Aviles

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-17293 Sara Ann Garcia

Chapter 7

#9.00 Motion to Disallow Claims of Alaska USA Federal Credit Union

EH__

Docket 13

***** VACATED *** REASON: CASE CONVERTED TO CH 7 ON
10/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sara Ann Garcia

Represented By
Lionel E Giron

Movant(s):

Sara Ann Garcia

Represented By
Lionel E Giron

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:30 PM

6:17-17477 Oracio Rosales Hernandez

Chapter 13

#10.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 9/26/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oracio Rosales Hernandez

Represented By
Aalok Sikand

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:30 PM

6:17-17785 Julie Graham

Chapter 13

#11.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julie Graham

Represented By
Michael Avanesian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:30 PM

6:17-17786 David Loronzo Cheshier

Chapter 13

#12.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 10/6/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Loronzo Cheshier

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:30 PM

6:17-17797 Jose L Garcia

Chapter 13

#13.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 10/6/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose L Garcia

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:30 PM

6:17-17806 Gerald Curtis Collins and Valerie Cecelia Collins

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gerald Curtis Collins

Represented By
M Wayne Tucker

Joint Debtor(s):

Valerie Cecelia Collins

Represented By
M Wayne Tucker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:30 PM

6:17-17827 Anthony J McPike

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anthony J McPike

Represented By
Nima S Vokshori

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:30 PM

6:17-17859 Sonia Garcia

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 10/10/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sonia Garcia

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:30 PM

6:17-17861 Arturo Olvera

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arturo Olvera

Represented By
William Radcliffe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:30 PM

6:17-17877 Latina Conley

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Latina Conley

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:30 PM

6:17-17926 Fatana Aziz

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

*** VACATED *** REASON: CASE DISMISSED 10/10/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fatana Aziz

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:30 PM

6:17-17930 Arinel Gonzalez

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arinel Gonzalez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:30 PM

6:17-17934 Ignacio Figueroa and Nadia Elizabeth Figueroa

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ignacio Figueroa

Represented By

Ghada Helena Philips

Joint Debtor(s):

Nadia Elizabeth Figueroa

Represented By

Ghada Helena Philips

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:31 PM

6:13-10251 Brandon Kent Blevins and Teresa Taylor Blevins

Chapter 13

#22.00 Trustee's Motion to Dismiss Case

EH__

Docket 220

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brandon Kent Blevins

Represented By
Raj T Wadhvani

Joint Debtor(s):

Teresa Taylor Blevins

Represented By
Raj T Wadhvani

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:31 PM

6:13-21974 Carlos Enrique Mendoza and Michelle Lea Mendoza

Chapter 13

#23.00 Trustee's Motion to Dismiss Case

EH__

Docket 125

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carlos Enrique Mendoza

Represented By
John F Brady
Lisa H Robinson

Joint Debtor(s):

Michelle Lea Mendoza

Represented By
John F Brady
Lisa H Robinson

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:31 PM

6:14-24807 Bryan K. Harrison and Dawn Harrison

Chapter 13

#24.00 Trustee's Motion to Dismiss Case

EH__

Docket 98

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bryan K. Harrison

Represented By
April E Roberts

Joint Debtor(s):

Dawn Harrison

Represented By
April E Roberts

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:31 PM

6:15-19812 Miguel Vivar and Maria Vivar

Chapter 13

#25.00 Trustee's Motion to Dismiss Case

EH__

Docket 44

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/29/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miguel Vivar

Represented By
Rebecca Tomilowitz

Joint Debtor(s):

Maria Vivar

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:31 PM

6:16-16946 Elliott Howard Blue, Jr. and Yvette Blue

Chapter 13

#26.00 Trustee's Motion to Dismiss Case

EH__

Docket 51

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/29/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Elliott Howard Blue Jr

Represented By
Michael E Clark
Barry E Borowitz

Joint Debtor(s):

Yvette Blue

Represented By
Michael E Clark
Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:31 PM

6:16-17855 Arthur Leo Gent and Wanda Sue Gent

Chapter 13

#27.00 Trustee's Motion to Dismiss Case

EH__

Docket 36

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arthur Leo Gent

Represented By
April E Roberts

Joint Debtor(s):

Wanda Sue Gent

Represented By
April E Roberts

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:31 PM

6:16-20342 Ana I Murguia Owens

Chapter 13

#28.00 Trustee's Motion to Dismiss Case

EH__

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ana I Murguia Owens

Represented By
Brian J Soo-Hoo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:31 PM

6:16-20553 Diana Cescolini

Chapter 13

#29.00 Trustee's Motion to Dismiss Case

EH__

Docket 62

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/10/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Diana Cescolini

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:31 PM

6:16-20773 Idalia Temblador-Baisa

Chapter 13

#30.00 Trustee's Motion to Dismiss Case

EH__

Docket 38

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Idalia Temblador-Baisa

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:31 PM

6:17-11478 Gregory A. King and Jessica A. King

Chapter 13

#31.00 Trustee's Motion to Dismiss Case

EH__

Docket 36

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gregory A. King

Represented By
Michael Jay Berger

Joint Debtor(s):

Jessica A. King

Represented By
Michael Jay Berger

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:31 PM

6:17-11513 Daniel Reyes

Chapter 13

#32.00 Trustee's Motion to Dismiss Case

EH__

Docket 25

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Reyes

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:31 PM

6:17-11633 Heather Marie Smith

Chapter 13

#33.00 Trustee's Motion to Dismiss Case

EH__

Docket 22

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/24/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Heather Marie Smith

Represented By
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:31 PM

6:17-11658 Maisha Lenette Ghant-Elie

Chapter 13

#34.00 Trustee's Motion to Dismiss Case

EH__

Docket 26

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/24/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maisha Lenette Ghant-Elie

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:31 PM

6:17-12649 Toni N. Ephraim

Chapter 13

#35.00 Trustee's Motion to Dismiss Case

EH__

Docket 29

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Toni N. Ephraim

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, October 26, 2017

Hearing Room 303

12:31 PM

6:17-14906 Roger James Gardner

Chapter 13

#36.00 Trustee's Motion to Dismiss Case

EH__

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roger James Gardner

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:17-18316 Julio C. Davila

Chapter 13

#1.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 17937 Aloe Lane, Riverside, California 92503

MOVANT: JULIO C. DAVILA

EH__

Docket 10

***** VACATED *** REASON: CASE DISMISSED 10/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julio C. Davila

Represented By
Michael Jay Berger

Movant(s):

Julio C. Davila

Represented By
Michael Jay Berger

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:17-18057 Marguerite Elaine Dayton

Chapter 7

#2.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Re: 82747 SCENIC DRIVE, INDIO, CA 92201

MOVANT: HSBC BANK USA, NATIONAL ASSOCIATION

EH__

Docket 9

Tentative Ruling:

Tentative Ruling:

10/31/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). DENY relief under § 362(d)(2) for lack of cause shown. GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 11.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Marguerite Elaine Dayton

Pro Se

Movant(s):

HSBC BANK USA

Represented By
Jason C Kolbe

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

CONT... Marguerite Elaine Dayton

Chapter 7

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:17-16839 Rhonda Lynn Hale

Chapter 7

#3.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HONDA CIVIC LX SEDAN 4D .

MOVANT: BALBOA THRIFT AND LOAN

EH__

Docket 15

Tentative Ruling:

Tentative Ruling:

10/31/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Rhonda Lynn Hale

Pro Se

Movant(s):

Balboa Thrift & Loan

Represented By
Keith E Herron

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

CONT... Rhonda Lynn Hale

Chapter 7

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:17-16646 Mark Scheirer and Randall Harrison

Chapter 7

#4.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Ford Fiesta, VIN: 3FADP4EJ5EM227944

MOVANT: FORD MOTOR CREDIT COMPANY LLC

EH__

Docket 16

Tentative Ruling:

Tentative Ruling:

10/31/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Mark Scheirer

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Randall Harrison

Represented By
Patricia M Ashcraft

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

CONT... Mark Scheirer and Randall Harrison

Chapter 7

Movant(s):

Ford Motor Credit Company LLC

Represented By
Sheryl K Ith

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:17-16490 Brandon Geoffrey Bosch

Chapter 7

#5.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 HONDA GROM, MLHJ C611 5F51 04465

MOVANT: AMERICAN HONDA FINANCE CORPORATION

EH__

Docket 22

Tentative Ruling:

Tentative Ruling:

10/31/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Brandon Geoffrey Bosch

Represented By
Glenn Park

Movant(s):

AMERICAN HONDA FINANCE

Represented By
Vincent V Frounjian

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

CONT... Brandon Geoffrey Bosch

Chapter 7

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:17-16301 Mohamed Abdelghany El Biali

Chapter 7

#6.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 18557 Glass Mountain Drive, Riverside, California 92504

MOVANT: DEUTSCHE BANK NATIONAL TRUST COMPANY

EH__

Docket 12

Tentative Ruling:

Tentative Ruling:

10/31/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 13 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Mohamed Abdelghany El Biali

Represented By
Gary S Saunders

Movant(s):

Deutsche Bank National Trust

Represented By
Sean C Ferry

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

CONT... Mohamed Abdelghany El Biali

Chapter 7

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:17-16257 Maria Armina Policarpio Trinidad

Chapter 7

#7.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 7092 Stone Creek Dr, Douglasville GA 30134

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 19

Tentative Ruling:

Tentative Ruling:

10/31/2017

On July 27, 2017, Maria Trinidad ("Debtor") filed a Chapter 7 voluntary petition. Debtor had a previous bankruptcy case dismissed two days earlier for failure to file case commencement documents. As such, pursuant to § 362(c)(3), the automatic stay was to terminate thirty days after the petition absent an order from the Court. The Court did not issue such an order, and, therefore, the automatic stay terminated on August 26, 2017.

On October 5, 2017, Wells Fargo Bank filed a motion for relief from the automatic stay (the "Annulment Motion"), requesting, in part, retroactive annulment of the automatic stay.

11 U.S.C. § 362(d) states:

(d) On request of a party in interest and after notice and a hearing, the court

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, October 31, 2017

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10:00 AM

CONT...

Maria Armina Policarpio Trinidad

Chapter 7

shall grant relief from the stay provided, under subsection (a) of this section such as by terminating, *annulling*, modifying, or condition such stay –

(emphasis added); *see also In re Schwartz*, 954 F.2d 569, 573 (9th Cir. 1992) ("If a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay, and whether violations of the stay are void or voidable is not at issue.").

The BAP, in *In re Fjeldsted*, noted the absence of a clear standard for annulment of the automatic stay. 293 B.R. 12, 21 (B.A.P. 9th Cir. 2003) ("There is less appellate clarity, however, in enunciating a test for retroactive stay relief. Inconsistent standards have thus developed, which run the gamut from such relief being justified only in 'extreme circumstances' to giving the court 'wide latitude' to 'balance the equities' on a case-by-case basis."). The BAP's most recent announcement of the standard for annulment of the automatic stay stated the following:

Determining whether cause exists to annul the stay is a case-by-case inquiry based on a balance of the equities. In conducting this inquiry the bankruptcy court, among other factors, should consider whether the creditor knew of the bankruptcy when violating the stay and whether the debtor's conduct was unreasonable, inequitable or prejudicial to the creditor.

In *Fjeldsted*, we approved additional factors for consideration in assessing the equities. The twelve nonexclusive factors are: (1) number of filings; (2) whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors; (3) a weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser; (4) the debtor's overall good faith (totality of circumstances test); (5) whether creditors knew of stay but

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Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

CONT...

Maria Armina Policarpio Trinidad

Chapter 7

nonetheless took action, thus compounding the problem; (6) whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules; (7) the relative ease of restoring parties to the status quo ante; (8) the costs of annulment to debtors and creditors; (9) how quickly creditors moved for annulment, or how quickly debtor moved to set aside the sale or violative conduct; (10) whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief; (11) whether annulment of the stay will cause irreparable injury to the debtor; and (12) whether stay relief will promote judicial economy or other efficiencies. The Panel in *Fjeldsted* cautioned that the twelve factors are merely a framework for analysis and not a scorecard, and that in any given case, one factor may so outweigh the others as to be dispositive.

In re Estavan Capital LLC, 2015 WL 7758494 at *5 (B.A.P. 9th Cir. 2015) (citations and quotations omitted).

While *Fjeldsted* cautioned that the enumerated factors are not a scorecard, it is clear that the majority of the factors, including, in particular, Debtor's lack of good faith, weigh in favor of annulling the stay. Specifically, as is noted by Wells Fargo, this is the eight bankruptcy affecting the property, and the property has been the subject of multiple unauthorized transfers. Debtor commenced the instant bankruptcy case five days before a scheduled foreclosure sale, and received the subject property via an unauthorized transfer the same day she filed the petition. Furthermore, there is no evidence that Wells Fargo was aware of the bankruptcy filing at the time it undertook the acts in question, nor is there any evidence that Wells Fargo violated the automatic stay once it learned of the filing.

Given all of the factors noted above, the Court is inclined to GRANT annulment of the automatic stay retroactive to the petition date, and otherwise GRANT the motion in its entirety, with the exception of ¶ 14, which is DENIED as moot.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:17-14906 Roger James Gardner

Chapter 13

#8.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 920 Paseo El Mirador, Palm Springs CA 92262

MOVANT: LOUIS J SILVESTRI AND LINDA SILVESTRI, TRUSTEE OF THE
LOUIS J SILVESTRI AND LINDA SILVESTRI FAMILY TRUST EST. 2/5/81

From: 9/12/17

EH__

Docket 23

Tentative Ruling:

09/12/2017
Service: Proper
Opposition: Yes

Movant has established cause to GRANT relief from the stay under § 362(d)(1) based on the Debtor's failure to make postpetition payments and GRANT waiver of 4001(a) (3) stay the request for termination of the co-debtor stay. Parties to discuss adequate protection and timing and likelihood of sale.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Roger James Gardner

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Louis J Silvestri and Linda Silvestri,

Represented By
Julian K Bach

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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10:00 AM

CONT... Roger James Gardner

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:17-13719 Sam Venero

Chapter 13

#9.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2013 TOYOTA Sienna Wagon 5D L V6

MOVANT: CAPITAL ONE AUTO FINANCE

EH__

Docket 38

Tentative Ruling:

Tentative Ruling:

10/31/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Sam Venero

Represented By
Edward T Weber

Movant(s):

Capital One Auto Finance, a division

Represented By
Zann R Welch
Bret D. Allen

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Tuesday, October 31, 2017

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10:00 AM

CONT... Sam Venero

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:17-12451 Javier Ruiz Olivas and Gloria Olguin

Chapter 7

#10.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 2596 Rorimer Drive, Riverside, CA .

MOVANT: INTERESTED PARTY ALAN GATTO

From: 10/24/17

EH__

Docket 36

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: None

The Court is inclined to CONTINUE the matter for Movant to file a supplemental declaration. Specifically, while Movant has checked the appropriate box stating that post-petition acts taken in violation of the automatic stay were taken before Movant knew of the bankruptcy filing, there is no supplemental declaration explaining when and how Movant obtained knowledge of the bankruptcy filing. Section 12 of the form motion explicitly contemplates the inclusion of a supplemental declaration when filing a motion to annul the automatic stay.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Javier Ruiz Olivas

Represented By
Aldo A Flores

Joint Debtor(s):

Gloria Olguin

Represented By

**United States Bankruptcy Court
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Tuesday, October 31, 2017

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10:00 AM

CONT... Javier Ruiz Olivas and Gloria Olguin

Chapter 7

Aldo A Flores

Movant(s):

Alan Gatto

Represented By
Helen G Long

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:17-10885 Guillermo Zamudio

Chapter 13

#11.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Re: 15513 STARVIEW ST, LAKE ELSINORE, CA 92530

MOVANT: WELLS FARGO BANK NA

EH__

Docket 34

Tentative Ruling:

Tentative Ruling:

10/31/2017

Service is Proper
Opposition: Yes

Parties to discuss adequate protection. Otherwise, the Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d)(1). GRANT requests under ¶¶ 2, 3 and 6. DENY request for confirmation that no stay is in effect for lack of cause shown. DENY alternative request under ¶ 12 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Guillermo Zamudio

Represented By
Paul Y Lee

Movant(s):

Wells Fargo Bank, NA

Represented By
Jason C Kolbe

**United States Bankruptcy Court
Central District of California
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Tuesday, October 31, 2017

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10:00 AM

CONT... Guillermo Zamudio

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:17-10769 Semone Ramone Monroe

Chapter 7

#12.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 32545 Machado St Lake Elsinore CA 92530

MOVANT: WELLS FARGO BANK NA

From: 6/27/17, 8/29/17

EH__

Docket 40

Tentative Ruling:

Tentative Ruling:

10/31/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3, and 12. DENY alternative request under ¶ 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Semone Ramone Monroe

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

CONT... Semone Ramone Monroe

Chapter 7

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:17-10141 Shawn Michel Smigel

Chapter 7

#13.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: Re: 31046 East Sunset Dr South Redlands, CA 92373

MOVANT: SUN WEST MORTGAGE COMPANY INC

EH__

Docket 26

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shawn Michel Smigel

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Sun West Mortgage Company, Inc.

Represented By
Jason C Kolbe

Trustee(s):

Robert Whitmore (TR)

Represented By
Julie Philippi

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:14-14942 Nicholas M. Morales and Bertha A. Galvan

Chapter 13

#14.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 804 Tehama Ct Lake Elsinore CA 92530

MOVANT: WELLS FARGO BANK

EH__

Docket 82

Tentative Ruling:

Tentative Ruling:

10/31/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under ¶ 13 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Nicholas M. Morales

Represented By
George J Paukert

Joint Debtor(s):

Bertha A. Galvan

Represented By
George J Paukert

**United States Bankruptcy Court
Central District of California
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Tuesday, October 31, 2017

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10:00 AM

CONT... Nicholas M. Morales and Bertha A. Galvan

Chapter 13

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Armin M Kolenovic

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:14-11369 Robert Wayne Cook, Sr. and Kelly Danielle Cook

Chapter 13

#15.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 4990 Padre Ave, Rancho Cucamonga, CA

MOVANT: WELLS FARGO BANK NA

From: 8/1/17, 9/12/17

EH__

Docket 114

Tentative Ruling:

08/01/2017

Service: Proper

Opposition: Yes

Movant has established sufficient grounds to support relief from stay under § 362(d) (1) based on Debtor's failure to make required post-petition payments. Debtor alleges that more payments have been made to the Movant than the Motion accounts for and that some payments have been misapplied by the Movant, but provides no specificity or detail to support his assertions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Robert Wayne Cook Sr.

Represented By
Steven A Alpert

Joint Debtor(s):

Kelly Danielle Cook

Represented By
Steven A Alpert

**United States Bankruptcy Court
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Tuesday, October 31, 2017

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10:00 AM

CONT... Robert Wayne Cook, Sr. and Kelly Danielle Cook

Chapter 13

Movant(s):

Wells Fargo Bank, N.A .

Represented By

Dane W Exnowski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:12-35097 Jose Antonio Velasco and Lilian Micaela Velasco

Chapter 13

#16.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1931 Hemmingway PL., San Jacinto, CA 92583

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 72

***** VACATED *** REASON: CASE DISMISSED 10/30/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Antonio Velasco

Represented By
Daniel King

Joint Debtor(s):

Lilian Micaela Velasco

Represented By
Daniel King

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
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Tuesday, October 31, 2017

Hearing Room 303

10:00 AM

6:12-26724 Chaunnon Matthew Goldberg and Danyale Dawn Goldberg Chapter 13

#17.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 9680 Hillhurst Drive, Moreno Valley, CA 92557-2309

MOVANT: DEUTSCHE BANK NATIONAL TRUST COMPANY

EH__

Docket 54

Tentative Ruling:

Tentative Ruling:

10/31/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). DENY relief under § 362(d)(2) for lack of cause shown. GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 13 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Chaunnon Matthew Goldberg

Represented By
Todd L Turoci
Amelia Puertas-Samara

Joint Debtor(s):

Danyale Dawn Goldberg

Represented By

**United States Bankruptcy Court
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10:00 AM

**CONT... Chaunnon Matthew Goldberg and Danyale Dawn Goldberg
Todd L Turoci**

Chapter 13

Movant(s):

DEUTSCHE BANK NATIONAL

Represented By
Sean C Ferry

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Tuesday, October 31, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#18.00 CONT Motion for Turnover of Property of the Estate

From: 10/24/17

EH__

Docket 303

Tentative Ruling:

10/31/2017

The hearing on the Motion is continued to November 28, 2017, at 2:00 p.m.
as a holding date.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn
Steven Werth

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn
Steven Werth

United States Bankruptcy Court
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Tuesday, October 31, 2017

Hearing Room 303

2:00 PM

6:17-15816 Integrated Wealth Management Inc

Chapter 7

#19.00 CONT Motion for Relief from Stay

MOVANT: CHRIS RISENMAY; JAMES BRAY; NICK CUNNINGTON; DAVID THATCHER; CLARK PENNEY; SHATTUCK LAMM; STEPHEN BIESINGER; MARK THATCHER; BRANDT KUHN; MICHELE SARNA; MARK HAYEK, AND MIKE MCCONNELL

From: 9/26/17, 10/3/17

Also #20 & #21

EH__

Docket 27

*** VACATED *** REASON: CONTINUED TO 11/28/17 AT 2:00 P.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

Movant(s):

Mark Hayek

Represented By
Erwin J Shustak

**United States Bankruptcy Court
Central District of California
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Tuesday, October 31, 2017

Hearing Room 303

2:00 PM

6:17-15816 Integrated Wealth Management Inc

Chapter 7

#20.00 CONT Motion For Order Restricting Debtor's Use Of Corporate Funds

From: 8/23/17, 10/3/17

Also #19 & #21

EH__

Docket 6

***** VACATED *** REASON: CONTINUED TO 11/28/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

Movant(s):

Mark Hayek

Represented By
Erwin J Shustak

**United States Bankruptcy Court
Central District of California
Riverside
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Courtroom 303 Calendar**

Tuesday, October 31, 2017

Hearing Room 303

2:00 PM

6:17-15816 Integrated Wealth Management Inc

Chapter 7

#21.00 CONT Status Conference RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual

From: 8/16/17, 8/23/17, 10/3/17

Also #19 & #20

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 11/28/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, October 31, 2017

Hearing Room 303

2:00 PM

6:16-19993 B & B Family, Incorporated

Chapter 11

#22.00 CONT Confirmation of Chapter 11 Plan

From: 9/26/17

Also #23

EH _____

Docket 118

Tentative Ruling:

10/31/2017

BACKGROUND

On November 10, 2016, B&B Family, Incorporated ("Debtor") filed a Chapter 11 voluntary petition. On March 31, 2017, Debtor filed its Chapter 11 plan and disclosure statement. On April 7, 2017, Debtor filed a motion to extend the deadline to obtain plan confirmation, which was, at the time, set for May 15, 2017. On May 2, 2017, after receiving an objection to plan confirmation, Debtor filed an amended Chapter 11 plan and disclosure statement.

Debtor did not lodge a proposed order for its motion to extend the deadline for plan confirmation until May 18, 2017. After the order was lodged, the Court denied the motion, noting that an order extending the deadline for plan confirmation must be signed before the expiration of the existing deadline. Nevertheless, the Court noted that the filing of an amended Chapter 11 plan may restart the plan confirmation deadline.

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2:00 PM

CONT... B & B Family, Incorporated

Chapter 11

On June 13, 2017, Debtor filed another amended Chapter 11 plan (the "Plan") and disclosure statement. On July 10, 2017, Debtor filed another motion to extend the deadline for plan confirmation. The Court granted that motion, and extended the deadline for plan confirmation to October 26, 2017.

On July 31, 2017, Debtor filed another amended disclosure statement, which was approved on August 3, 2017. On August 25, 2017, Debtor filed a motion to continue the plan confirmation hearing, which was granted on August 28, 2017.¹ On October 11, 2017, Debtor filed a brief in support of plan confirmation. No objections to confirmation have been received by the Court.

DISCUSSION

I. Ballots

Pursuant to declaration filed September 1, 2017, Debtor timely transmitted its disclosure statement, Chapter 11 plan, ballots, and notice of all relevant dates. Debtor provides ballots received from: (1) Comerica Bank; (2) High Desert Prime LLC; (3) Pawnee Leasing Corporation; (4) a second ballot from Comerica Bank; (5) a ballot from Financial Pacific Leasing; and (6) a final ballot which appears to have not been submitted to the Court. Debtor's ballot summary lists a seventh ballot received, which is not identified in Debtor's brief or in Exhibit 2. Debtor asserts that all classes have voted to accept the plan, although the evidence submitted to the Court, namely Exhibit 2 of Debtor's confirmation brief, without more, demonstrates Class 6 rejecting the plan.

II. Classes

Class 1: senior secured claim of Comerica Bank, secured by Debtor's assets.

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CONT... B & B Family, Incorporated

Chapter 11

Class 4: secured claim of Financial Pacific Leasing, secured by specific equipment.

Class 5: landlord's claim for arrears.

Class 6: non-priority, non-insider unsecured claims, including the unsecured portions of the claims held by the entities in Class 1 and 4. This class includes Pawnee Leasing Corporation, Comerica Bank, Financial Pacific Leasing (ostensibly), and a fourth unsecured creditor not identified in the confirmation brief or ballot summary.

Class 7: "interest holders of Debtor."

III. Plan Confirmation

"The bankruptcy court must confirm a Chapter 11 debtor's plan of reorganization if the debtor provides by a preponderance of the evidence either (1) that the Plan satisfies all thirteen requirements of 11 U.S.C. § 1129(a), or (2) if the only condition not satisfied is the eighth requirement, 11 U.S.C. § 1129(a)(8), the Plan satisfies the 'cramdown' alternative to this condition found in 11 U.S.C. § 1129(b), which requires that the Plan 'does not discriminate unfairly' against and 'is fair and equitable' towards each impaired class that has not accepted the plan." *In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d 650, 653 (9th Cir. 1997).

As a preliminary matter, the Court notes that Debtor has not directly provided any evidence in support of confirmation. Neither Debtor's confirmation brief nor Debtor's proposed plan contains a declaration or any authentication of the attached exhibits.

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CONT... B & B Family, Incorporated

Chapter 11

Debtor's disclosure statement, which has been approved by this Court, contains a declaration of Debtor's principal, however, the exhibits appended to that declaration are not authenticated either.

A. 11 U.S.C. § 1129(a) requirements

1129(a)(1): "The plan complies with the applicable provisions of this title." The legislative history indicates that this requirement primarily refers to the requirements of 11 U.S.C. §§ 1122 and 1123. *See In re Multiut Corp.*, 449 B.R. 323, 333 (Bankr. N.D. Ill. 1984). Section 1122 deals with the classification of claims, and requires that claims in a single class be substantially similar. Here, Debtor has formed five distinct classes: (1) senior secured creditor; (2) junior secured creditor; (3) landlord; (4) general unsecured; and (5) Debtor's interest holders. The Court finds that the demarcation of classes is proper. Section 1123 deals with the contents of a plan, and identifies certain mandatory and permissive provisions. It appears that Debtor is in compliance with § 1123(a)(1)-(4), (7)-(8). Regarding § 1123(a)(6), Debtor's confirmation brief seems to concede that an explicit provision conforming to the Code is required, and Debtor has agreed to insert such a provision into any plan confirmation order. Regarding § 1123(a)(5), the absence of admissible evidence precludes the Court from addressing whether Debtor has demonstrated that there are adequate means provided for the plan's implementation.

1129(a)(2): "The proponent of the plan complies with the applicable provisions of this title." The legislative history indicates that this requirement primarily refers to the disclosure requirements in § 1125. *See In re Capitol Lakes, Inc.*, 2016 WL 3598536 at *2 (Bankr. W.D. Wis. 2016). Here, the Court has approved Debtor's disclosure statement, and Debtor has provided a service declaration indicating that the required documents were served on creditors, and, therefore, it appears that this requirement has been satisfied.

1129(a)(3): Fed. R. Bankr. P. Rule 3020(b)(2) provides that: "If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues." Here, no objection has been timely filed, and, as such, the Court deems the Plan to have been

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CONT... B & B Family, Incorporated

Chapter 11

filed in good faith and not by any means forbidden by law. Therefore, this requirement is satisfied.

1129(a)(4): Article 1(A) of the Plan states: "Professional fees may only be paid upon application to an approval by the court." Therefore, it appears that this requirement has been satisfied.

1129(a)(5): Article V(B) of the Plan describes the proposed post-confirmation management of Debtor, and, as such, it appears that this requirement has been satisfied.

1129(a)(6): This requirement deals with government regulation of the rates of the Debtor and is not applicable to the instant case.

1129(a)(7): Debtor's confirmation brief asserts that, if the case were converted to Chapter 7, the case would be a no-asset case. Furthermore, Debtor has provided ballots accepting the Plan from all creditors other than Class 6 creditors, who are unsecured creditors. Therefore, it would appear that all creditors have either accepted the Plan or will receive at least as much as would be received in a Chapter 7 liquidation.

1129(a)(8): Based upon the ballot summary provided by Debtor, Classes 1, 4, and 5 (each of which contains a single creditor) have accepted the Plan. As is noted in the *Ballot* section above, the Ballot results of Class 6 are unclear. The ballot summary (and confirmation brief) provided by Debtor assert that Class 6 has accepted the Plan, while the individual ballots appended to the brief, without more, indicate Class 6 has rejected the Plan. As such, Debtor has failed to demonstrate that § 1129(a)(8) has been satisfied.

1129(a)(9): Article I of the Plan appears to state that all administrative claims and

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Chapter 11

priority claims will either be paid in full on the Effective Date of the Plan, or that the holder of the claim has consented to different treatment. The only administrative or priority claim (other than the fees for Debtor's counsel) that is not to be paid immediately upon the effective date of the Plan is the tax claim held by the California State Board of Equalization, which is to be paid over four years with 7% interest. Debtor asserts that the California State Board of Equalization's failure to object to the proposed treatment constitutes acceptance.

1129(a)(10): The ballot summary and ballots submitted by Debtor appear to indicate that at least one impaired class has accepted the Plan, and, therefore, it appears that this requirement is satisfied.

1129(a)(11): This provision requires Debtor to demonstrate that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization." Debtor has not provided any admissible evidence to the Court that would enable the Court to undertake the required review.

1129(a)(12): Article V(B) of the Plan provides that the quarterly fees of UST will be paid on the effective date of the Plan, and, as such, this provision appears to be satisfied.

1129(a)(13): Debtor has not addressed this provision, ostensibly because it is inapplicable in the instant case.

1129(a)(14): Debtor has not addressed this provision, ostensibly because it is inapplicable in the instant case.

1129(a)(15): Debtor is not an individual, and, therefore, this provision is inapplicable in the instant case.

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CONT... B & B Family, Incorporated

Chapter 11

1129(a)(16): Debtor asserts that the Plan does not contemplate any transfer of property (other than money), and, as such, that this provision has been satisfied.

Summary of Confirmation Issues:

-First and foremost, Debtor has not provided any evidence in support of confirmation. To the extent that that lack of evidence is particularly important, the absence of supporting evidence is noted below.

-There is no evidence of any confirmation requirements under § 1129.

-Debtor has not provided any evidence of the cash on hand available to make the payments the Plan contemplates being made immediately upon the effective date, which appears to total \$58,251.48.

-Debtor has not provided any evidence of its historical financials. As a result, the Court is unable to effectively review the feasibility of the Plan.

-The Plan appears to have incorrectly labelled Exhibit A and Exhibit B.

-Because of the absence of evidence in support of confirmation, Debtor has not demonstrated that it possesses adequate means for the Plan's confirmation.

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-The ballots submitted to the Court indicate that Class 6 has rejected the Plan. Debtor has only submitted two ballots from Class 6, one indicating acceptance and one indicating rejection. § 1126(c) requires that a majority of the claim holders in a class accept the plan, and that has not occurred here.

-Debtor has not addresses the alternative cram-down mechanism, much less satisfied it.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

B & B Family, Incorporated

Represented By
Todd L Turoci
Julie Philippi

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6:16-19993 B & B Family, Incorporated

Chapter 11

#23.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 12/13/16, 3/7/17, 5/30/17, 7/25/17, 9/26/17

Also #22

EH__

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

B & B Family, Incorporated

Represented By
Todd L Turoci
Julie Philippi

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11:00 AM

6:16-17768 Dispatch Transportation LLC

Chapter 7

#1.00 Motion of USA Waste of California, Inc. for an Order Authorizing (1) the Examinations of Craig Johnson and John Sullivan, III, (2) the Conclusion of the Examination of Kim Pugmire, and (3) the Issuance of Subpoenas Duces Tecum to Commodity Trucking Acquisition, LLC and Craig Johnson, Pursuant to Fed. R. Bankr. P. 2004

Also #14

EH__

Docket 172

***** VACATED *** REASON: HEARING TRAILED TO 2:00 P.M. ON
11/1/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dispatch Transportation LLC

Represented By
Leonard M Shulman
Elyza P Eshaghi

Movant(s):

USA Waste of California, Inc.

Represented By
Paul J Laurin

Trustee(s):

Charles W Daff (TR)

Represented By
Toan B Chung

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Hearing Room 303

11:00 AM

6:14-17350 Dean L. Springer, Sr. and Tami Jo Springer

Chapter 7

#2.00 CONT Motion to Quash and Motion for Protective Order

From: 8/30/17, 9/20/17

EH__

Docket 148

***** VACATED *** REASON: CONTINUED TO 12/13/17 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr.	Pro Se
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Joint Debtor(s):

Tami Jo Springer	Pro Se
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Movant(s):

Hilder & Associates	Represented By Lei Lei Wang Ekvall
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Trustee(s):

Larry D Simons (TR)	Represented By Richard A Marshack Sarah Cate Hays D Edward Hays
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Hearing Room 303

11:00 AM

6:13-19187 Cynthia M Lucero

Chapter 7

#3.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 80

Tentative Ruling:

11/01/2017

No opposition has been filed.
Service was Proper.

The applications for compensation of the Trustee and his Counsel have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the following administrative claims will be allowed:

First, as requested in the Application of BB&K, the fees of Trustee's Counsel are allowed in full as a final order. Separately, pursuant to the Trustee Final Report, the following amounts may be paid by the Trustee from funds on hand,

Counsel Fees: \$499.46

The applications for compensation are approved and the trustee and associated professionals may submit on the tentative.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Cynthia M Lucero

Represented By
Stephen R Wade
W. Derek May

Trustee(s):

Robert Whitmore (TR)

Represented By

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CONT... Cynthia M Lucero

Franklin C Adams
Cathy Ta

Chapter 7

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Wednesday, November 01, 2017

Hearing Room 303

2:00 PM

6:17-13649 Fernando Fabrigas, Sr.

Chapter 7

Adv#: 6:17-01156 Daff v. Fabrigas, Jr.

#4.00 Motion for Default Judgment Against Defendant Fernando Fabrigas, Jr.

EH__

Docket 13

Tentative Ruling:

11/01/2017

BACKGROUND

On May 1, 2017 ("Petition Date"), Fernando Fabrigas Sr. and Estela Fabrigas (collectively, the "Debtors") filed their petition for chapter 7 relief. Charles Daff is the duly appointed chapter 7 trustee ("Trustee"). Among the potential assets of the Debtors' bankruptcy estate on the Petition Date is certain real property located at 231 Arden Street in Hemet, CA (the "Property").

On July 31, 2017, the Trustee filed a complaint for avoidance of transfer pursuant to §§ 544, 548, 550, and 551 as intentional and constructive transfers; for disallowance of claims pursuant to § 502, to prevent unjust enrichment pursuant to § 105, for declaratory relief pursuant to §§ 541, 544, and 548, and for turnover of the Property pursuant to § 542 ("Complaint") against Fernando Fabrigas Jr. ("Defendant"). On October 11, 2017, default was entered as against the Defendant. On that same date, the Trustee filed and served his Motion for Default Judgment. Service appears proper and no opposition has been filed.

DISCUSSION

A. Entry of Default

Federal Rule of Civil Procedure 55 states that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." Fed. R. Civ. P. 55(a). Per LBR 7055-1(b)(1), a

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CONT... Fernando Fabrigas, Sr.

Chapter 7

motion for entry of default judgment shall contain the following:

1. When and against what party default was entered ✓
2. Whether defaulting party is an infant or incompetent person – ✓
3. Whether the defaulting party is currently on active duty – ✓
4. Whether notice has been served on defaulting party, if required by FRCP 55(b)(2) ✓

(Daff Decl. ¶8).

B. Admissions

Pursuant to FRBP 7008(b)(6), failure to deny an allegation of the Complaint where a responsive pleading is required constitutes an admission of the allegation.

The Complaint alleges, in pertinent part, that:

1. Debtors testified at the initial June 8, 2017, 341(a) Meeting of Creditors that they owned the real property located at 231 Arden Street in Hemet, California, 92543 (Compl. at ¶12);
2. Title in the Property was vested in the Debtors as "Wife and Husband as Community Property," Document Number 2013-0291659 as of June 19, 2013 (Id. at ¶11);
3. Pursuant to a Quitclaim Deed recorded in connection with the Property on May 11, 2015 in the Riverside County Recorder's Office as Document Number 2015-0194114, the Trustee is informed and believes that the Defendant acquired and took title to the Property a **first** time (Id. at ¶14, Ex 3);
4. On February 25, 2016, Defendant transferred the Property back to the Debtors pursuant to a Grant Deed recorded in the Riverside County Recorder's Office as Document Number 2016-0075152 (Id. at ¶15, Ex. 4);

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CONT...

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5. A Quitclaim Deed was recorded in connection with the Property on October 14, 2016, in the Riverside County Recorder's Office as Document Number 2016-0451368 by which Trustee is informed and believes that Defendant acquired and took title to the Property a **second** time (Id. at ¶16, Ex. 5) (the "Transfer");
6. The Trustee is informed and believes that no or nominal consideration was paid in connection with the Transfer. Trustee is further informed and believed and thereon alleges that the Debtors received no or nominal value in exchange for the Transfer (Id. at ¶17).

C. Default Judgment

Factors which may be considered by courts in exercising discretion as to the entry of a default judgment include: (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute considering material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the FRCP favoring decision on the merits. *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

1. Proper Service of Summons and Complaint

Trustee served the Defendant at the address of the Property and asserts in his declaration that the Defendant, at all relevant times, resided at the Property. (Iskander Decl. ¶4).

2. Merits of Plaintiff's claim

Upon default, the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true. *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987); "The defendant, by his default, admits the plaintiff's **well-pleaded** allegations of facts, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established." *Nishimatsu Construction Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th

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Cir. 1975) (emphasis added); *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978); *Cotton v. Massachusetts Mut. Life Ins. Co.*, 402 F.3d 1267, 1278(11th Cir. 2005) (do not have to take as true facts that are not well-pleaded or conclusions of law).

a. First Claim: Intentional Fraudulent Transfer under § 548(a)(1)(A)

The Trustee has the burden of proving, by preponderance of the evidence, that the Property was property of the Debtors, that the transfer of such Property occurred within one year prior to the filing of the Debtors' bankruptcy petition, and that such transfer was made with the actual intent to hinder, delay, or defraud the Debtors' creditors. *In re Brobeck, Phleger & Harrison LLP*, 408 B.R. 318, 338-339 (Bankr. N.D. Cal. 2009)(internal citations omitted).

As to the Trustee's First Claim for relief, based on the allegations of the Complaint indicating that the transfer was made to the Defendant – an insider of the Debtors and their son (Daff Decl. ¶4), that the Debtors retained possession or control of the Property, that the timing of the second transfer in October 2016, was less than one year prior to Petition Date, that Debtors schedules indicate that their non-real property assets are de minimis (Ex. B), and finally based on the allegations that the Debtors have received less than reasonably equivalent value for the Transfer, the Trustee has demonstrated that the badges of fraud are sufficient to permit a finding that the Property was transferred with an actual intent to hinder, delay or defraud the Debtors' creditors. Further, the Transfer occurred within one year prior to the filing of the petition. Based on the foregoing, the Court GRANTS the Motion as to the First Claim.

b. Second Claim: Constructive Fraudulent Transfer under § 548(a)(1)(B)

At trial, and on his motion, the Trustee has the burden of proving, by preponderance of the evidence, that: (1) Debtors had an interest in the Property; (2) a transfer of that interest occurred within one year of the filing of the bankruptcy petition; (3) Debtors were insolvent at the time of the transfer or became insolvent as a result thereof; and (4) Debtors received "less than a reasonably equivalent value in exchange for" the Property. *Brobeck* at 340–41.

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As to the Second Claim, the Trustee's Complaint and Motion demonstrate that the Debtors had a prepetition interest in the Property, that the Transfer occurred within one year of the filing of the petition, that Debtors were insolvent at the time of the transfer or likely became insolvent as a result thereof given that absent the real property, the Debtors debts exceed their assets by approximately \$21,522. Finally, the Trustee has alleged and the grant deeds attached to the Complaint support a finding that the Transfer was for less than reasonably equivalent value. Based on the foregoing findings, the Court GRANTS the Motion as to the Second Claim.

c. Recovery of Property pursuant to § 550

Section 550 provides in relevant part that:

[T]o the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from

- (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
- (2) any immediate or mediate transferee of such initial transferee.

11 U.S.C. § 550(a)(1)-(2). Put simply, § 550 identifies the parties liable for repayment of the avoided or avoidable transfer, and empowers the trustee to recover the property transferred or its value for the benefit of the estate. *See Crafts Plus+, Inc. v. Foothill Capital Corp. (In re Crafts Plus+)*, 220 B.R. 331, 334 (Bankr.W.D.Tex.1998).

Here, it is undisputed that the Defendant is the initial transferee and, having found that the Defendant's October 14, 2016, Quitclaim Deed is avoidable under § 548, the Trustee may recover, for the benefit of the estate, the Property pursuant to § 550.

d. Third Claim: Disallowance of Claim pursuant to §502(d)

Section 502(d) provides that ... "the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

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The plain language of § 502(d) contemplates the filing of a proof of claim by the Defendant in the Debtors' bankruptcy estate. It is the Court's ruling that disallowance such a claim is premature at this juncture and the Trustee has not demonstrated cause for the granting of such prospective relief. The Motion is DENIED as to the Third Claim.

e. Fifth Claim: Declaratory Relief re Community Property

The Trustee seeks an adjudication that the Property is community property and property of the estate. This claim is duplicative of the findings necessary to a ruling as to the Trustee's Sixth Claim for turnover. As such, the Court is inclined to DENY the Fifth Claim as moot.

f. Sixth Claim: Turnover under § 542

Section 542 of the Bankruptcy Code provides in pertinent part the following:

(a) ... an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a). To support a cause of action for turnover pursuant to Section 542 of the Bankruptcy Code, the bankruptcy trustee has the burden of proof, by a preponderance of the evidence, to establish that: (1) the property is in the possession, custody or control of a noncustodial third party entity; (2) the property constitutes property of the estate; (3) the property is of the type that the trustee could use, sell or lease pursuant to Code Section 363 or that the debtor could exempt under section 522, and (4) that the property is not of inconsequential value or benefit to the estate. *In re Shapphire Res., LLC*, No. 2:10-BK-57493-RK, 2016 WL 320823, at *5 (Bankr. C.D. Cal. Jan. 25, 2016) (citing Resnick and Sommer, Collier on Bankruptcy, ¶ 542.02 at 542-8—542-9 (16th ed.2015); see also *In re Labib*, 2013 WL 5934326, slip op. at *4 (Bankr.C.D.Cal.2013), citing 5 Resnick and Sommer, Collier on Bankruptcy, ¶ 542.02 at 542-5 (16th ed.2013).

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Here, the Property is in the possession of the Defendant because the Trustee has alleged that Defendant also resides at the Property. Additionally, based on the allegations of the Complaint, the Property constitutes property of the estate based on the chain of title and also based on the testimony of the Debtors as set forth in the Complaint. Further, the Property is real property that could be sold by the Trustee pursuant to 11 U.S.C. § 363. Finally, the Trustee has provided evidence that the value of the Property is approximately \$310,000 which exceeds the secured amount owed on the Property of \$228,534. Based on the foregoing, the Court finds that the Trustee has met his burden as to turnover. The Motion is GRANTED as to the Sixth Claim.

3. The possibility of a dispute considering material facts

Defendant was properly served with the summons and complaint. Defendant has failed to respond or to otherwise provide evidence to support any dispute as to material facts. Additionally, here, the Trustee has provided declaratory evidence and judicially noticeable documents (which this court deems admitted), which support the Trustee's factual assertions. Therefore, no dispute of material facts exists to preclude granting default judgment.

4. Whether the default was due to excusable neglect

Defendant was properly served with summons and complaint. Defendant failed to respond. Furthermore, Defendant had the opportunity to file opposition to the instant Motion and failed to do so. Finally, Defendant has not filed a motion to set aside the entry of default, nor responded with any written objection. Thus, the Court finds that the default was not due to excusable neglect.

5. The strong policy underlying the FRCP favoring decision on the merits

Although default judgments are ordinarily disfavored, termination of a case before hearing the merits is allowed when a defendant fails to defend an action under Fed. R. Civ. P. 55. Here, the Defendant's apparent lack of interest in defending

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himself militates in favor of default judgment being entered.

TENTATIVE RULING

Based on the foregoing, the Court GRANTS the Motion as to the First, Second, and Sixth claims for relief; and the Court DENIES the Motion as to the Third and Fifth Claims.

The Transfer of the Property is avoided and the Trustee may recover the Property pursuant to § 550. Separately, the Court orders turnover of the Property pursuant to § 542.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Fernando Fabrigas Sr.

Represented By
R Creig Greaves

Defendant(s):

Fernando Fabrigas, Jr.

Pro Se

Joint Debtor(s):

Estela F. Fabrigas

Represented By
R Creig Greaves

Movant(s):

Charles W. Daff

Represented By
Brandon J Iskander

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Plaintiff(s):

Charles W. Daff

Represented By
Brandon J Iskander

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Brandon J Iskander

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2:00 PM

6:17-11311 AHMAD JAMALEDDIN ALJINDI

Chapter 7

Adv#: 6:17-01051 ALJINDI v. US DEPARTMENT OF EDUCATION ET AL

#5.00 CONT Status Conference RE Amended Complaint by AHMAD JAMALEDDIN ALJINDI against US DEPARTMENT OF EDUCATION ET AL . (RE: related document(s)1 Adversary case 6:17-ap-01051. . Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) filed by Plaintiff AHMAD JAMALEDDIN ALJINDI

From: 6/7/17

EH__

Docket 5

***** VACATED *** REASON: ORDER/STIPULATION DISMISSING
CASE ENTERED 7/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

AHMAD JAMALEDDIN ALJINDI Pro Se

Defendant(s):

US DEPARTMENT OF Represented By
Elan S Levey

Plaintiff(s):

AHMAD JAMALEDDIN ALJINDI Pro Se

Trustee(s):

Lynda T. Bui (TR) Pro Se

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6:17-10032 Richard Earl Davis, Jr

Chapter 7

Adv#: 6:17-01066 Gumbs et al v. Davis, Jr et al

#6.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01066. Complaint by Angelo M Gumbs , Kandis Gumbs against Richard Earl Davis Jr, Two6 Sports Management . false pretenses, false representation, actual fraud))

From: 6/7/17, 8/30/17

EH _____

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Earl Davis Jr

Represented By
Todd L Turoci

Defendant(s):

Richard Earl Davis Jr

Pro Se

Two6 Sports Management

Pro Se

Plaintiff(s):

Angelo M Gumbs

Represented By
Alexander B Boris

Kandis Gumbs

Represented By
Alexander B Boris

Trustee(s):

Steven M Speier (TR)

Pro Se

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2:00 PM

6:16-19799 Jaison Vally Surace

Chapter 7

Adv#: 6:17-01006 Pringle v. Qadir et al

#7.00 CONT Status Conference RE: Complaint by John P. Pringle against Walie A. Qadir, Marym Qadir, Najlla Qadir. (Charge To Estate). (Attachments: # 1 Adversary Coversheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 3/8/17, 6/28/17, 8/30/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 1/3/18 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Defendant(s):

Walie A. Qadir

Represented By
Batkhand Zoljargal

Marym Qadir

Represented By
Batkhand Zoljargal

Najlla Qadir

Represented By
Batkhand Zoljargal

Plaintiff(s):

John P. Pringle

Represented By
Carmela Pagay
Todd A Frealy

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CONT... Jaison Vally Surace

Chapter 7

Trustee(s):

John P Pringle (TR)

Represented By
Todd A Frealy
Carmela Pagay

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6:16-12574 William Dillingham Smyth

Chapter 7

Adv#: 6:16-01212 Pringle v. Smyth

#8.00 CONT Status Conference Re: Complaint by John P. Pringle against Elena Smyth. Nature of Suit: 13 - Recovery of money/property - 548 fraudulent transfer

From: 11/2/16, 1/11/17, 4/26/17, 6/21/17

EH__

Docket 1

*** VACATED *** REASON: CASE DISMISSED 8/9/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Dillingham Smyth

Represented By
Kevin M Cortright

Defendant(s):

Elena Smyth

Represented By
C Scott Rudibaugh

Plaintiff(s):

John P. Pringle

Represented By
Melissa Davis Lowe
Rika Kido

Trustee(s):

John P Pringle (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe

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6:14-13046 Allen Dale Sanderson

Chapter 7

Adv#: 6:14-01116 Verbree v. Sanderson

#9.00 Status Conference RE: [1] Adversary case 6:14-ap-01116. Complaint by Margaret Verbree against Allen Dale Sanderson. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Madoni, Stephen)

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allen Dale Sanderson

Represented By
Robert K McKernan

Defendant(s):

Allen Dale Sanderson

Represented By
Robert K McKernan

Plaintiff(s):

Margaret Verbree

Represented By
Stephen A Madoni

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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2:00 PM

6:16-13644 Yolanda Yvette Tyes

Chapter 7

Adv#: 6:16-01200 Chicago Title Insurance Company v. Tyes

#10.00 Plaintiff Chicago Title Insurance Company's Motion for Summary Judgment

Also #11

EH__

Docket 50

***** VACATED *** REASON: CONTINUED TO 11/15/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Yolanda Yvette Tyes	Pro Se
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Defendant(s):

Yolanda Yvette Tyes	Pro Se
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Movant(s):

Chicago Title Insurance Company	Represented By Charles C H Wu Thanh-Thuy T Luong Vikram M Reddy
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Plaintiff(s):

Chicago Title Insurance Company	Represented By Charles C H Wu Thanh-Thuy T Luong Vikram M Reddy
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Trustee(s):

Larry D Simons (TR)	Pro Se
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6:16-13644 Yolanda Yvette Tyes

Chapter 7

Adv#: 6:16-01200 Chicago Title Insurance Company v. Tyes

#11.00 CONT Status Conference Re: Complaint by Chicago Title Insurance Company against Yolanda Yvette Tyes. (d),(e), 62 - Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud

From: 10/19/16, 11/9/16, 1/11/17, 6/21/17, 10/25/17

Also #10

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 11/15/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Yolanda Yvette Tyes Pro Se

Defendant(s):

Yolanda Yvette Tyes Pro Se

Plaintiff(s):

Chicago Title Insurance Company Represented By
Charles C H Wu
Thanh-Thuy T Luong
Vikram M Reddy

Trustee(s):

Larry D Simons (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 01, 2017

Hearing Room 303

2:00 PM

6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#12.00 CONT Motion For Summary Judgment/Memorandum of Points and Authorities on the Preclusive Effect of Plaintiff's State Court Judgment
HOLDING DATE

From: 6/7/17, 7/12/17, 8/2/17, 9/27/17, 10/4/17

Also #13

EH__

Docket 208

***** VACATED *** REASON: CONTINUED TO 12/6/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi
Ryan F Thomas

Movant(s):

Charles Edward Schrader

Pro Se

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 01, 2017

Hearing Room 303

2:00 PM

6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#13.00 CONT Status Conference RE: Adversary case 6:13-ap-01171. Complaint by Charles Edward Schrader against Narinder Sangha . willful and malicious injury
HOLDING DATE

From: 7/8/15, 11/4/15, 3/2/16, 12/14/16, 12/13/17, 4/5/17, 6/7/17, 7/12/17, 8/2/17, 9/27/17, 10/4/17

Also #12

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 12/6/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi
Ryan F Thomas

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 01, 2017

Hearing Room 303

2:00 PM

6:16-17768 Dispatch Transportation LLC

Chapter 7

#14.00 Motion of USA Waste of California, Inc. for an Order Authorizing (1) the Examinations of Craig Johnson and John Sullivan, III, (2) the Conclusion of the Examination of Kim Pugmire, and (3) the Issuance of Subpoenas Duces Tecum to Commodity Trucking Acquisition, LLC and Craig Johnson, Pursuant to Fed. R. Bankr. P. 2004

Also #1

EH__

Docket 172

Tentative Ruling:

11/01/2017

On October 6, 2017, USA Waste renewed its request for a 2004 examination (the "Motion"). In connection with its Motion, USA Waste seeks an order under Rule 2004 permitting it: (a) to issue subpoenas duces tecum to Commodity Trucking Acquisition, LLC ("CTA") and Craig Johnson; (b) to conduct examinations of Craig Johnson and John Sullivan, III; and (c) to conclude the examination of Kim Pugmire. Kim Pugmire is the president of both the Debtor and CTA. Craig Johnson is an attorney who is alleged to have represented and provided advice to the Debtor, CTA and their principals. John Sullivan III is the CFO/COO of CTA.

The request directed to CTA seeks five categories of documents:

1. Documents related to the Manning Pit operations;
2. Documents concerning the Article 9 sale;
3. Documents related to corporate ownership and running of CTA;
4. Documents related to CTA's relationship and "contribution payment" to the City of Irwindale; and
5. Documents/Communications related to the bankruptcy specifically.

The request directed to Craig Johnson ("Johnson") includes requests related to:

1. Documents concerning the Article 9 sale;

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CONT... **Dispatch Transportation LLC** Chapter 7

2. Documents related to the Manning Pit;
3. Documents regarding payments made to Johnson by Pugmire, Degler and their affiliates;
4. Documents related to and Communications regarding the bankruptcy;
5. Communications with the City of Irwindale related to the Manning Pit;
6. Communications concerning the settlement of the Dispatch Action; and
7. Common interest agreements or conflict waivers between Johnson, Debtor, CTA, Pugmire, Degler, or Pugmire and Degler's affiliates.

Oppositions to the Motion were timely filed by CTA, Johnson, and the Debtor (collectively, the "Oppositions"). USA Waste timely filed its reply to the Oppositions on October 25, 2017 ("Reply").

DISCUSSION

As a threshold matter, the Court examines the Motion cognizant of the existence of a parallel proceeding in Superior Court. On August 15, 2017, this Court granted USA Waste relief from the automatic stay to proceed with its action in state court, titled USA Waste of California, Inc. v. City of Irwindale, et al., Los Angeles Superior Court Case No. KC066276 (the "Dispatch Action"). Following the entry of relief from stay, USA Waste filed and served an amended complaint in the Dispatch Action naming CTA as a party to that action. (Beehler Decl., Ex. 6).

Whether there Exists Good Cause to Conduct Proposed Rule 2004 Examinations

The purpose of a Bankruptcy Rule 2004 examination is "to allow inquiry into the debtor's acts, conduct or financial affairs so as to discover the existence and location of assets of the estate." *In re Dinubilo*, 177 B.R. 932, 940 (E.D. Cal. 1993); *see also In re Fearn*, 96 B.R. 135, 138 (Bankr. S.D. Ohio 1989) (rule's primary purpose is to ascertain "the extent and location of the estate's assets [and] such examination is not limited to the debtor or his agents, but may properly extend to creditors and third parties who have had dealings with the debtor") (internal citations omitted). The scope of an examination permitted under Bankruptcy Rule 2004 is broader than discovery allowed under the Federal Rules of Civil Procedure and may be in the nature of a "fishing expedition." *In re Duratech Industries, Inc.*, 241 B.R. 283, 289 (E.D.N.Y. 1999). This broad inquiry extends to "unearthing frauds" and "determining whether

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CONT... **Dispatch Transportation LLC**

Chapter 7

wrongdoing has occurred." *See In re N. Plaza LLC*, 395 B.R. 113, 122 n. 9 (S.D. Cal. 2008) (purpose of Rule 2004 examination is "discovering assets and unearthing frauds"); *In re Strecker*, 251 B.R. 878, 882 (Bankr. D. Colo. 2000) ("[E]xaminations under Rule 2004 are allowed for the purpose of discovering assets, examining transactions, and determining whether wrongdoing has occurred."). Indeed, Bankruptcy Rule 2004 examinations are often used to investigate potential fraudulent transfer claims and related issues. *See, e.g., In re Washington Mut., Inc.*, 408 B.R. 45, 49 (Bankr. D. Del. 2009) (granting motion to conduct Rule 2004 examination of third party regarding potential claims for business tort, fraudulent transfer, turnover, and preferential transfer); *In re Irwin*, 2010 WL 4976226, at *1-2 (Bkrcty. E.D. Pa. 2010) (authorizing Rule 2004 examinations seeking "information relating to asset transfers that may be avoidable as fraudulent transfers"); *Matter of Sun Medical Management, Inc.*, 104 B.R. 522, 524 (Bkrcty. M.D. Ga. 1989) (authorizing 2004 examinations to investigate potential fraudulent transfer claims).

USA Waste indicates that good cause exists to conduct the proposed examinations because (1) the examinations are necessary to investigate the value of the estate and its claims, (2) the examinations are necessary to unearth any fraud or wrongdoing in connection with Debtor's pre-2011 operations, the Article 9 Sale, assets of the estate, and potentially the bankruptcy itself, (3) the availability of discovery in the Dispatch Action does not bar the examinations, and (4) denial of the examinations would cause USA Waste undue hardship and injustice. (Reply at 6:15-20). As to "good cause", the Court is not persuaded that USA Waste has demonstrated that the information sought in the Motion preserves its rights or is otherwise likely to bring assets back into the estate. The Motion makes frequent reference to "bad faith" and "fraud". However, it is not clear what USA Waste seeks to accomplish in the bankruptcy context should it succeed in uncovering evidence to support its allegations. Assuming that USA Waste's allegations are proven to be true, it appears that CTA and its principals/officers may be liable for USA Waste's claims against the Debtor. These are issues, however, being addressed in the Dispatch Action. Further, the Article 9 Sale which resulted in the transfer of the Debtor's assets to CTA occurred in 2011 and USA Waste has not articulated under which legal theory, or bankruptcy code provision, it could unravel the sale to bring assets back into the bankruptcy estate for the benefit of the Debtor's creditors. Without more, the Court

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CONT... **Dispatch Transportation LLC**

Chapter 7

finds that USA Waste has failed to demonstrate good cause exists to permit further discovery via Rule 2004 at this point.

The Availability of Discovery via a Pending Proceeding

Next, the Court has reviewed the Oppositions and is persuaded that under the "pending proceeding" rule, the Motion should be DENIED as to those factual issues being addressed in the Dispatch Action. In particular, a review of USA Waste's Second Amended Complaint ("SAC") as provided by CTA indicates that the litigation in the Dispatch Action shall address factual issues related to the Manning Pit operations, the Article 9 sale, the corporate ownership and running of CTA (which the SAC refers to as an alter ego of the Debtor), and the relationships between CTA, the Debtor, and their principals with the City of Irwindale (specifically with regard to the settlement and contribution payment made to the City of Irwindale).

In its Reply to the Oppositions, USA Waste argues that the availability of discovery in the Dispatch Action does not bar the proposed examinations. In support, USA Waste argues that discovery in the Dispatch Action is (1) "limited to the two discrete commercial tort claims in the timeframe alleged and matters relevant to those claims or otherwise admissible in the action" and (2) that "financial discovery would not be permitted in the Dispatch Action absent a finding of liability." (Reply at 9:5-16; 10:2-14). In support of its position, USA Waste cites to *In re International Fibercom, Inc.*, 283 B.R. 290, 292-293 (Bankr. D. Ariz. 2002), *In re Analytical Sys., Inc.*, 71 B.R. 408, 413 (Bankr. N.D. Ga. 1987), *In re Buick*, 174 B.R. 299, 305 (Bankr. D. Colo. 1994), and *Kerner v. Superior Court*, 206 Cal. App. 4th 84, 119 (2012) (pretrial discovery of a defendant's financial condition is prohibited absent a court order permitting such discovery under California Civil Code § 3295).

International Fibercom simply reiterates the general rule that where pending litigation exists, a court should consider whether the information sought under rule 2004 "relates to" the pending litigation. If the information sought relates not to the pending litigation, but to another matter, then the "pending proceeding" rule does not apply. *International Fibercom* at 292. Further, the court holds the ultimate discretion whether to permit the use of Rule 2004, and courts have for various reasons done so despite the existence of other pending litigation. *Id.* Here, the Court acknowledges that it is not compelled to follow the "pending proceeding" rule. Nevertheless, the striking similarity between the allegations of the SAC and the

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Chapter 7

documents/communications sought by the Motion, indicate that USA Waste is attempting to obtain by means of the bankruptcy, documents and communications which it cannot or is unlikely to obtain via the more narrow discovery rules in the California courts. Strategically, this makes perfect sense. This Court, however, is not persuaded that USA Waste has provided a sufficient basis to permit it to obtain discovery in the bankruptcy at this time.

The Court is further not persuaded that the documents and communications sought regarding the Article 9 sale, the Manning Pit, the City of Irwindale, and corporate ownership of CTA are "beyond the scope" of the issues in the Dispatch Action. *See Buick* at 305. In fact, USA Waste's tort claims specifically reference an "active" alleged conspiracy between the City of Irwindale, CTA, and its principals as well as the alleged fraudulent and intentional disposition of valuable assets from Debtor to CTA as bases for its first cause of action for intentional interference with contractual relations. (SAC at ¶93). Finally, USA Waste's argument that financial documents are not available via the Dispatch Action is unavailing. In *Kerner v. Superior Court*, 206 Cal. App. 4th 84, 119, 141 Cal. Rptr. 3d 504, 531 (2012), as modified (May 21, 2012), the rule prohibiting such discovery specifically relates to discovery of a defendant's financial condition in connection with a claim for punitive damages. *Kerner*, however, is distinguishable from the instant case, where USA Waste has placed the financial transactions between the Proposed Examinees at issue in the Dispatch Action as supportive of their claim for intentional interference with contractual relations.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to DENY the Motion without prejudice for lack of good cause shown and, alternatively, the Court has determined USA Waste may instead pursue discovery in connection with the Dispatch Action and with the due process safeguards that the California rules of evidence and civil procedure provide.

APPEARANCES REQUIRED.

Party Information

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CONT... Dispatch Transportation LLC

Chapter 7

Debtor(s):

Dispatch Transportation LLC

Represented By
Leonard M Shulman
Elyza P Eshaghi

Movant(s):

USA Waste of California, Inc.

Represented By
Paul J Laurin

Trustee(s):

Charles W Daff (TR)

Represented By
Toan B Chung

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 02, 2017

Hearing Room 303

12:30 PM

6:14-12693 Silvia Vargas

Chapter 13

#1.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Also #2

EH__

Docket 69

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Silvia Vargas

Represented By
Matthew D Resnik
S Renee Sawyer Blume

Movant(s):

Silvia Vargas

Represented By
Matthew D Resnik
S Renee Sawyer Blume

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Thursday, November 02, 2017

Hearing Room 303

12:30 PM

6:14-12693 Silvia Vargas

Chapter 13

#2.00 Motion for Authority to Incur Debt

Also #1

EH__

Docket 82

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Silvia Vargas

Represented By
Matthew D Resnik
S Renee Sawyer Blume

Movant(s):

Silvia Vargas

Represented By
Matthew D Resnik
S Renee Sawyer Blume

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, November 02, 2017

Hearing Room 303

12:30 PM

6:17-17934 Ignacio Figueroa and Nadia Elizabeth Figueroa

Chapter 13

#3.00 CONT Confirmation of Chapter 13 Plan

From: 10/26/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ignacio Figueroa

Represented By
Ghada Helena Philips

Joint Debtor(s):

Nadia Elizabeth Figueroa

Represented By
Ghada Helena Philips

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 02, 2017

Hearing Room 303

12:30 PM

6:17-17986 Patricia Marie Pergl

Chapter 13

#4.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Marie Pergl

Represented By
William Radcliffe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 02, 2017

Hearing Room 303

12:30 PM

6:17-18016 Timothy G Klepeis

Chapter 13

#5.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy G Klepeis

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, November 02, 2017

Hearing Room 303

12:30 PM

6:17-18037 Annie Marie Cordero and Lena Renee Bushong

Chapter 13

#6.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Annie Marie Cordero

Represented By
Edward G Topolski

Joint Debtor(s):

Lena Renee Bushong

Represented By
Edward G Topolski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 02, 2017

Hearing Room 303

12:30 PM

6:17-18039 Tony Lopez, Sr and Nelida Aguilar

Chapter 13

#7.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tony Lopez Sr

Represented By
Edgar P Lombera

Joint Debtor(s):

Nelida Aguilar

Represented By
Edgar P Lombera

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, November 02, 2017

Hearing Room 303

12:30 PM

6:17-18053 Jason L Gregg

Chapter 13

#8.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 9/29/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jason L Gregg

Represented By
Christopher Hewitt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, November 02, 2017

Hearing Room 303

12:30 PM

6:17-18099 Millie Marie Miller

Chapter 13

#9.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/16/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Millie Marie Miller

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 02, 2017

Hearing Room 303

12:30 PM

6:17-18106 Hugo Sanchez Cruz

Chapter 13

#10.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hugo Sanchez Cruz

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 02, 2017

Hearing Room 303

12:30 PM

6:17-18131 Ramon Gabriel Alvarez

Chapter 13

#11.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ramon Gabriel Alvarez

Represented By
Devin Sawdayi

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 02, 2017

Hearing Room 303

12:30 PM

6:17-18145 Amayda Vanessa Palomares

Chapter 13

#12.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amayda Vanessa Palomares

Represented By
Timothy L McCandless

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, November 02, 2017

Hearing Room 303

12:30 PM

6:17-18169 Jose M Gaxiola

Chapter 13

#13.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose M Gaxiola

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 02, 2017

Hearing Room 303

12:30 PM

6:17-18210 Jorge Manuel Azmitia and Yoshiko Azmitia

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jorge Manuel Azmitia

Represented By
Nicholas M Wajda

Joint Debtor(s):

Yoshiko Azmitia

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, November 02, 2017

Hearing Room 303

12:30 PM

6:17-18316 Julio C. Davila

Chapter 13

#15.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 17937 Aloe Lane, Riverside, CA 92503

MOVANT: JULIO C. DAVILA

EH__

Docket 32

Tentative Ruling:

11/2/17

Tentative Ruling:

The Court is inclined to DENY the motion. Section 362(c)(3)(C) creates a presumption that this case was not filed in good faith, and Debtor has not rebutted the presumption by clear and convincing evidence. Specifically, while Debtor has indicated that his previous Chapter 13 case was dismissed for failure to make plan payments, and while Debtor has provided evidence of his current income, there is no evidence regarding Debtor's income during his previous case. In the absence of this evidence, the Court is precluded from determining whether there is a material change in Debtor's financial circumstances.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Julio C. Davila

Represented By
Michael Jay Berger

Movant(s):

Julio C. Davila

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, November 02, 2017

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12:30 PM

CONT... Julio C. Davila

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, November 02, 2017

Hearing Room 303

12:31 PM

6:14-19913 Martin Caballero and Clementina Caballero

Chapter 13

#16.00 CONT Trustee's Motion to Dismiss Case

From: 10/5/17

EH__

Docket 109

*** VACATED *** REASON: WITHDRAWAL OF MOTION FLD
10/31/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martin Caballero

Represented By
Luis G Torres

Joint Debtor(s):

Clementina Caballero

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 02, 2017

Hearing Room 303

12:31 PM

6:14-22147 Thomas Rodriguez Alcala

Chapter 13

#17.00 Trustee's Motion to Dismiss Case

EH__

Docket 67

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Rodriguez Alcala

Represented By
Halli B Heston

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, November 02, 2017

Hearing Room 303

12:31 PM

6:15-15904 Lucianna P Wais

Chapter 13

#18.00 CONT Trustee's Motion to Dismiss Case

From: 10/5/17

EH__

Docket 71

***** VACATED *** REASON: WITHDRAWAL OF MOTION FLD
10/31/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lucianna P Wais

Represented By
Steven A Alpert

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, November 02, 2017

Hearing Room 303

12:31 PM

6:16-21232 Alejandro Salinas, Jr.

Chapter 13

#19.00 Trustee's Motion to Dismiss Case

EH__

Docket 47

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alejandro Salinas Jr.

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, November 02, 2017

Hearing Room 303

12:31 PM

6:17-11538 Michael Ray Sandoval

Chapter 13

#20.00 Trustee's Motion to Dismiss Case

EH__

Docket 51

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Ray Sandoval

Represented By

Michael E Clark

Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 07, 2017

Hearing Room 303

10:00 AM

6:14-23389 Deborah L. Hill

Chapter 13

#1.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 10919 Sunset Meadow Drive Riverside, CA 92505

MOVANT: SETERUS INC

EH__

Docket 180

Tentative Ruling:

11/07/2017

Service: Proper

Opposition: Yes, 10/19

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay
and GRANT relief sought under ¶3 of prayer for relief.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Deborah L. Hill

Represented By
Michael Smith
Sundee M Teeple

Movant(s):

Seterus, Inc. as the authorized

Represented By
Nichole Glowin

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 07, 2017

Hearing Room 303

10:00 AM

6:15-13354 Jeffrey Michael Berger and Debra Lynn Berger

Chapter 13

#2.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 30820 Via Las Palmas, Thousand Palms CA 92276

MOVANT: DITECH FINANCIAL LLC

From: 10/3/17

EH__

Docket 67

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey Michael Berger

Represented By
Jenny L Doling

Joint Debtor(s):

Debra Lynn Berger

Represented By
Jenny L Doling

Movant(s):

DITECH FINANCIAL LLC

Represented By
Natalie E Lea
Jamie D Hanawalt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 07, 2017

Hearing Room 303

10:00 AM

6:15-20023 Zachary Lee Nowak

Chapter 13

#3.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 44984 Hawthorn Street, Temecula, California 92592

MOVANT: WELLS FARGO BANK, N.A.

From: 10/3/17

EH__

Docket 60

Tentative Ruling:

10/03/2017

Service is Proper
Opposition: Limited

Subject to discussion from the parties regarding adequate protection, the Court is inclined to GRANT the motion based on the post-confirmation defaults.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Zachary Lee Nowak

Represented By
John F Brady

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Alexander K Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 07, 2017

Hearing Room 303

10:00 AM

6:15-20062 Lilia Iveth Fong

Chapter 13

#4.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1345 N Fillmore Ave, Rialto, California 92376-3173

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 44

Tentative Ruling:

11/07/2017

Service: Proper

Opposition: Yes, filed 10/11

Parties to indicate whether they have reached agreement regarding the terms of an APO.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Lilia Iveth Fong

Represented By
John F Brady

Movant(s):

Wells Fargo Bank N.A.

Represented By
Vanessa A Cole
Bruce E Brown
Senique Moore
Deborah L Rothschild
Alexander K Lee

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

CONT... Lilia Iveth Fong

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 07, 2017

Hearing Room 303

10:00 AM

6:15-20998 Eric Kissell

Chapter 13

#5.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2015 TOYOTA TUNDRA

MOVANT: TOYOTA MOTOR CREDIT CORP

EH__

Docket 56

*** VACATED *** REASON: ORDER ENTERED 11/6/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eric Kissell

Represented By
William J Howell

Movant(s):

TOYOTA MOTOR CREDIT

Represented By
Mark D Estle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, November 07, 2017

Hearing Room 303

10:00 AM

6:16-20553 Diana Cescolini

Chapter 13

#6.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2015 TOYOTA AVALON; VIN:
4T1BK1EB8FU149840

MOVANT: TOYOTA MOTOR CREDIT CORPORATION

EH__

Docket 71

***** VACATED *** REASON: ORDER ENTERED 11/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Diana Cescolini

Represented By
John F Brady

Movant(s):

TOYOTA MOTOR CREDIT

Represented By
Mark D Estle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, November 07, 2017

Hearing Room 303

10:00 AM

6:17-14359 Lashanda Moniek Shelton

Chapter 13

#7.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1173 South Cactus Avenue, #1, Rialto, CA 92376

MOVANT: THE BANK OF NEW YORK MELLON

From: 10/24/17

EH__

Docket 22

***** VACATED *** REASON: ORDER ENTERED 11/1/17**

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: Yes

Subject to cure by Debtor or adequate protection discussions, the Court is inclined to GRANT relief from the automatic stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under § 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Lashanda Moniek Shelton

Represented By
Lionel E Giron
Kevin Tang

Movant(s):

The Bank of New York Mellon FKA

Represented By
Robert P Zahradka

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, November 07, 2017

Hearing Room 303

10:00 AM

CONT... Lashanda Moniek Shelton

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 07, 2017

Hearing Room 303

10:00 AM

6:17-15867 Silvia Alvarez

Chapter 13

#8.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: Re: 940 W Olive St, Corona CA 92882

MOVANT: STATE FARM BANK FSB

From: 9/12/17

EH__

Docket 13

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/6/17**

Tentative Ruling:

09/12/2017
Service: Proper
Opposition: None

The Debtor had two prior cases pending and dismissed within the prior year. On this basis, the Court grants Movant's request for an order confirming that there is no stay currently in effect as to the Debtor. Based on the multiple bankruptcies affecting the Property, the Court GRANTS relief from the stay under §§ 362(d)(1) and (d)(4). GRANT waiver of 4001(a)(3) stay. The Court further GRANTS relief under ¶¶ 3, 6, 9(b), and 11. Relief is DENIED under ¶10(b) for lack of cause shown.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Silvia Alvarez

Represented By
Filemon Kevin Samson III

Movant(s):

State Farm Bank, F.S.B.

Represented By
Jason C Kolbe

**United States Bankruptcy Court
Central District of California
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Tuesday, November 07, 2017

Hearing Room 303

10:00 AM

CONT... Silvia Alvarez

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Tuesday, November 07, 2017

Hearing Room 303

10:00 AM

6:17-17316 Luis Fernando Montoya, Jr.

Chapter 13

#9.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 BMW 4 Series Sedan 4D 428i I4 Turbo

MOVANT: BMW BANK OF NORTH AMERICA

Also #10

EH__

Docket 24

Tentative Ruling:

11/07/2017

Service is Proper

Opposition: Debtor filed nonopposition to Motion on 11/01/17

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay. GRANT relief from the co-debtor stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Luis Fernando Montoya Jr.

Represented By
Anthony B Vigil

Movant(s):

BMW Bank of North America

Represented By
Bret D. Allen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Tuesday, November 07, 2017

Hearing Room 303

10:00 AM

6:17-17316 Luis Fernando Montoya, Jr.

Chapter 13

#10.00 CONT Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2016 NISSAN GT-R, VIN #
JN1AR5EF5GM290035

MOVANT: NISSAN MOTOR ACCEPTANCE CORPORATION

From: 10/24/17

Also #9

EH__

Docket 18

***** VACATED *** REASON: ORDER ENTERED 11/1/17**

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: Yes

Parties to discuss adequate protection.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Luis Fernando Montoya Jr.

Represented By
Anthony B Vigil

Movant(s):

NISSAN MOTOR ACCEPTANCE

Represented By
Michael D Vanlochem

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

CONT... Luis Fernando Montoya, Jr.

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 07, 2017

Hearing Room 303

10:00 AM

6:17-17406 Lidia Alicia Acosta

Chapter 7

#11.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 SOEN mobile home, Title #K5691150, VIN #SFW014759TXB, located at 318 Tilley Rd., Leesville, LA .

MOVANT: 21ST MORTGAGE CORPORATION

EH__

Docket 11

Tentative Ruling:

11/07/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Lidia Alicia Acosta

Represented By
Ramiro Flores Munoz

Movant(s):

21st Mortgage Corporation

Represented By
Diane Weifenbach

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, November 07, 2017

Hearing Room 303

2:00 PM

6:16-19993 B & B Family, Incorporated

Chapter 11

#12.00 CONT Confirmation of Chapter 11 Plan

From: 9/26/17, 10/31/17

Also #13

EH _____

Docket 118

Tentative Ruling:

10/31/2017

BACKGROUND

On November 10, 2016, B&B Family, Incorporated ("Debtor") filed a Chapter 11 voluntary petition. On March 31, 2017, Debtor filed its Chapter 11 plan and disclosure statement. On April 7, 2017, Debtor filed a motion to extend the deadline to obtain plan confirmation, which was, at the time, set for May 15, 2017. On May 2, 2017, after receiving an objection to plan confirmation, Debtor filed an amended Chapter 11 plan and disclosure statement.

Debtor did not lodge a proposed order for its motion to extend the deadline for plan confirmation until May 18, 2017. After the order was lodged, the Court denied the motion, noting that an order extending the deadline for plan confirmation must be signed before the expiration of the existing deadline. Nevertheless, the Court noted that the filing of an amended Chapter 11 plan may restart the plan confirmation deadline.

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CONT... B & B Family, Incorporated

Chapter 11

On June 13, 2017, Debtor filed another amended Chapter 11 plan (the "Plan") and disclosure statement. On July 10, 2017, Debtor filed another motion to extend the deadline for plan confirmation. The Court granted that motion, and extended the deadline for plan confirmation to October 26, 2017.

On July 31, 2017, Debtor filed another amended disclosure statement, which was approved on August 3, 2017. On August 25, 2017, Debtor filed a motion to continue the plan confirmation hearing, which was granted on August 28, 2017.¹ On October 11, 2017, Debtor filed a brief in support of plan confirmation. No objections to confirmation have been received by the Court.

DISCUSSION

I. Ballots

Pursuant to declaration filed September 1, 2017, Debtor timely transmitted its disclosure statement, Chapter 11 plan, ballots, and notice of all relevant dates. Debtor provides ballots received from: (1) Comerica Bank; (2) High Desert Prime LLC; (3) Pawnee Leasing Corporation; (4) a second ballot from Comerica Bank; (5) a ballot from Financial Pacific Leasing; and (6) a final ballot which appears to have not been submitted to the Court. Debtor's ballot summary lists a seventh ballot received, which is not identified in Debtor's brief or in Exhibit 2. Debtor asserts that all classes have voted to accept the plan, although the evidence submitted to the Court, namely Exhibit 2 of Debtor's confirmation brief, without more, demonstrates Class 6 rejecting the plan.

II. Classes

Class 1: senior secured claim of Comerica Bank, secured by Debtor's assets.

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CONT... B & B Family, Incorporated

Chapter 11

Class 4: secured claim of Financial Pacific Leasing, secured by specific equipment.

Class 5: landlord's claim for arrears.

Class 6: non-priority, non-insider unsecured claims, including the unsecured portions of the claims held by the entities in Class 1 and 4. This class includes Pawnee Leasing Corporation, Comerica Bank, Financial Pacific Leasing (ostensibly), and a fourth unsecured creditor not identified in the confirmation brief or ballot summary.

Class 7: "interest holders of Debtor."

III. Plan Confirmation

"The bankruptcy court must confirm a Chapter 11 debtor's plan of reorganization if the debtor provides by a preponderance of the evidence either (1) that the Plan satisfies all thirteen requirements of 11 U.S.C. § 1129(a), or (2) if the only condition not satisfied is the eighth requirement, 11 U.S.C. § 1129(a)(8), the Plan satisfies the 'cramdown' alternative to this condition found in 11 U.S.C. § 1129(b), which requires that the Plan 'does not discriminate unfairly' against and 'is fair and equitable' towards each impaired class that has not accepted the plan." *In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d 650, 653 (9th Cir. 1997).

As a preliminary matter, the Court notes that Debtor has not directly provided any evidence in support of confirmation. Neither Debtor's confirmation brief nor Debtor's proposed plan contains a declaration or any authentication of the attached exhibits.

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CONT... B & B Family, Incorporated

Chapter 11

Debtor's disclosure statement, which has been approved by this Court, contains a declaration of Debtor's principal, however, the exhibits appended to that declaration are not authenticated either.

A. 11 U.S.C. § 1129(a) requirements

1129(a)(1): "The plan complies with the applicable provisions of this title." The legislative history indicates that this requirement primarily refers to the requirements of 11 U.S.C. §§ 1122 and 1123. *See In re Multiut Corp.*, 449 B.R. 323, 333 (Bankr. N.D. Ill. 1984). Section 1122 deals with the classification of claims, and requires that claims in a single class be substantially similar. Here, Debtor has formed five distinct classes: (1) senior secured creditor; (2) junior secured creditor; (3) landlord; (4) general unsecured; and (5) Debtor's interest holders. The Court finds that the demarcation of classes is proper. Section 1123 deals with the contents of a plan, and identifies certain mandatory and permissive provisions. It appears that Debtor is in compliance with § 1123(a)(1)-(4), (7)-(8). Regarding § 1123(a)(6), Debtor's confirmation brief seems to concede that an explicit provision conforming to the Code is required, and Debtor has agreed to insert such a provision into any plan confirmation order. Regarding § 1123(a)(5), the absence of admissible evidence precludes the Court from addressing whether Debtor has demonstrated that there are adequate means provided for the plan's implementation.

1129(a)(2): "The proponent of the plan complies with the applicable provisions of this title." The legislative history indicates that this requirement primarily refers to the disclosure requirements in § 1125. *See In re Capitol Lakes, Inc.*, 2016 WL 3598536 at *2 (Bankr. W.D. Wis. 2016). Here, the Court has approved Debtor's disclosure statement, and Debtor has provided a service declaration indicating that the required documents were served on creditors, and, therefore, it appears that this requirement has been satisfied.

1129(a)(3): Fed. R. Bankr. P. Rule 3020(b)(2) provides that: "If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues." Here, no objection has been timely filed, and, as such, the Court deems the Plan to have been

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CONT... B & B Family, Incorporated

Chapter 11

filed in good faith and not by any means forbidden by law. Therefore, this requirement is satisfied.

1129(a)(4): Article 1(A) of the Plan states: "Professional fees may only be paid upon application to an approval by the court." Therefore, it appears that this requirement has been satisfied.

1129(a)(5): Article V(B) of the Plan describes the proposed post-confirmation management of Debtor, and, as such, it appears that this requirement has been satisfied.

1129(a)(6): This requirement deals with government regulation of the rates of the Debtor and is not applicable to the instant case.

1129(a)(7): Debtor's confirmation brief asserts that, if the case were converted to Chapter 7, the case would be a no-asset case. Furthermore, Debtor has provided ballots accepting the Plan from all creditors other than Class 6 creditors, who are unsecured creditors. Therefore, it would appear that all creditors have either accepted the Plan or will receive at least as much as would be received in a Chapter 7 liquidation.

1129(a)(8): Based upon the ballot summary provided by Debtor, Classes 1, 4, and 5 (each of which contains a single creditor) have accepted the Plan. As is noted in the *Ballot* section above, the Ballot results of Class 6 are unclear. The ballot summary (and confirmation brief) provided by Debtor assert that Class 6 has accepted the Plan, while the individual ballots appended to the brief, without more, indicate Class 6 has rejected the Plan. As such, Debtor has failed to demonstrate that § 1129(a)(8) has been satisfied.

1129(a)(9): Article I of the Plan appears to state that all administrative claims and

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CONT... B & B Family, Incorporated

Chapter 11

priority claims will either be paid in full on the Effective Date of the Plan, or that the holder of the claim has consented to different treatment. The only administrative or priority claim (other than the fees for Debtor's counsel) that is not to be paid immediately upon the effective date of the Plan is the tax claim held by the California State Board of Equalization, which is to be paid over four years with 7% interest. Debtor asserts that the California State Board of Equalization's failure to object to the proposed treatment constitutes acceptance.

1129(a)(10): The ballot summary and ballots submitted by Debtor appear to indicate that at least one impaired class has accepted the Plan, and, therefore, it appears that this requirement is satisfied.

1129(a)(11): This provision requires Debtor to demonstrate that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization." Debtor has not provided any admissible evidence to the Court that would enable the Court to undertake the required review.

1129(a)(12): Article V(B) of the Plan provides that the quarterly fees of UST will be paid on the effective date of the Plan, and, as such, this provision appears to be satisfied.

1129(a)(13): Debtor has not addressed this provision, ostensibly because it is inapplicable in the instant case.

1129(a)(14): Debtor has not addressed this provision, ostensibly because it is inapplicable in the instant case.

1129(a)(15): Debtor is not an individual, and, therefore, this provision is inapplicable in the instant case.

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CONT... B & B Family, Incorporated

Chapter 11

1129(a)(16): Debtor asserts that the Plan does not contemplate any transfer of property (other than money), and, as such, that this provision has been satisfied.

Summary of Confirmation Issues:

-First and foremost, Debtor has not provided any evidence in support of confirmation. To the extent that that lack of evidence is particularly important, the absence of supporting evidence is noted below.

-There is no evidence of any confirmation requirements under § 1129.

-Debtor has not provided any evidence of the cash on hand available to make the payments the Plan contemplates being made immediately upon the effective date, which appears to total \$58,251.48.

-Debtor has not provided any evidence of its historical financials. As a result, the Court is unable to effectively review the feasibility of the Plan.

-The Plan appears to have incorrectly labelled Exhibit A and Exhibit B.

-Because of the absence of evidence in support of confirmation, Debtor has not demonstrated that it possesses adequate means for the Plan's confirmation.

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CONT... B & B Family, Incorporated

Chapter 11

-The ballots submitted to the Court indicate that Class 6 has rejected the Plan. Debtor has only submitted two ballots from Class 6, one indicating acceptance and one indicating rejection. § 1126(c) requires that a majority of the claim holders in a class accept the plan, and that has not occurred here.

-Debtor has not addresses the alternative cram-down mechanism, much less satisfied it.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

B & B Family, Incorporated

Represented By
Todd L Turoci
Julie Philippi

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6:16-19993 B & B Family, Incorporated

Chapter 11

#13.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 12/13/16, 3/7/17, 5/30/17, 7/25/17, 9/26/17, 10/31/17

Also #12

EH__

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

B & B Family, Incorporated

Represented By
Todd L Turoci
Julie Philippi

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:17-17735 LaWanda Jenelle Elzy

Chapter 7

#1.00 Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation re 2015 Toyota Rav4

EH__

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

LaWanda Jenelle Elzy

Pro Se

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:17-17033 Noelle E. Sandoval

Chapter 7

#3.00 Pro se Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc. re 2015 Dodge Journey

EH__

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Noelle E. Sandoval

Represented By
James D. Hornbuckle

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, November 08, 2017

Hearing Room 303

10:00 AM

6:17-16886 Indolfo Banos and Esmeralda Banos

Chapter 7

#4.00 Pro se Reaffirmation Agreement Between Debtor and Kia Motors Finance re
2017 Kia Forte

Also #5

EH__

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Indolfo Banos

Represented By
Daniel King

Joint Debtor(s):

Esmeralda Banos

Represented By
Daniel King

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

6:17-16886 Indolfo Banos and Esmeralda Banos

Chapter 7

#5.00 Pro se Reaffirmation Agreement Between Debtor and Nissan Motor Acceptance Corporation re 2015 Nissan Sentra

Also #4

EH__

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Indolfo Banos

Represented By
Daniel King

Joint Debtor(s):

Esmeralda Banos

Represented By
Daniel King

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

10:00 AM

6:17-16754 Ruth Kathryn Wardschenk and Cheri Lee Wardschenk

Chapter 7

#6.00 Pro se Reaffirmation Agreement Between Debtor and Bank of the West re 2014 Toyota Prius

EH__

Docket 12

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ruth Kathryn Wardschenk

Represented By
James P Doan

Joint Debtor(s):

Cheri Lee Wardschenk

Represented By
James P Doan

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

10:00 AM

6:17-15759 Jose Alfredo Rodriguez

Chapter 7

#7.00 Reaffirmation Agreement Between Debtor and Ally Bank Re: 2010 Chrysler 300

EH__

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Alfredo Rodriguez

Represented By
Daniel King

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, November 08, 2017

Hearing Room 303

10:00 AM

6:17-15496 Maurice Anson Harris and Crystal Ann Harris

Chapter 7

#8.00 Reaffirmation Agreement Between Debtor and Wells Fargo Bank NA dba Wells Fargo Dealer Services Re: 2011 Toyota Corolla - 4CYL

EH__

Docket 17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maurice Anson Harris Pro Se

Joint Debtor(s):

Crystal Ann Harris Pro Se

Trustee(s):

Robert Whitmore (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 08, 2017

Hearing Room 303

11:00 AM

6:17-17768 Chooza, LLC

Chapter 7

- #9.00 Order to show cause re dismissal for deficiency
1) Corporate Resolution Authorizing Filing of Petition
2) Corporate Ownership Statement

EH__

Docket 15

*** VACATED *** REASON: ORDER ENTERED 11/1/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chooza, LLC

Represented By
Jerome S Demaree

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 08, 2017

Hearing Room 303

11:00 AM

6:16-20367 Scott MacGregor Whitehurst and Erin Marie Pollock

Chapter 7

#10.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 22

Tentative Ruling:

TENTATIVE RULING

11/8/2017

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1,306.24
Trustee Expenses: \$ 121.20

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Scott MacGregor Whitehurst

Represented By
Robert W Ripley

Joint Debtor(s):

Erin Marie Pollock

Represented By
Robert W Ripley

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 08, 2017

Hearing Room 303

11:00 AM

6:16-17280 Jesus Ramirez Guillen and Yovana Mondagron Guillen

Chapter 7

#11.00 CONT Motion for fine and/or disgorgement of fees against bankruptcy petition preparer United States Trustees Notice Of Motion And Motion To Fine And Enjoin Bankruptcy Petition Preparer Hugo Laguna

From: 10/25/17

EH__

Docket 40

Tentative Ruling:

10/25/17

BACKGROUND

On August 15, 2016, Jesus & Yovana Guillen ("Debtors") filed a Chapter 7 voluntary petition. On November 23, 2016, UST filed a motion for order requiring Hugo Laguna ("Laguna") to pay fines to the UST, pay damages to Debtor, and disgorge fees received. On December 16, 2016, Debtors filed a declaration clarifying answers that were provided at the meeting of creditors. On December 22, 2016, Hugo Laguna ("Laguna") filed a late declaration. After continuing the hearing, Laguna and UST eventually stipulated to a resolution of the matter. The Court entered an order on April 19, 2017, requiring Laguna to pay \$100 to Debtors within thirty days, and to pay \$250 to UST within sixty days. Laguna was to file a compliance declaration regarding the former within forty-five days.

On May 23, 2017, the case was closed. On September 22, 2017, the case was reopened, and on September 25, 2017, UST filed a motion to fine and enjoin Laguna. UST asserts that Laguna has not complied with the Court order of April 19, 2017. On October 20, 2017, Laguna filed a late response. Laguna asserts that he paid \$250 to UST shortly after filing the instant motion.

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Wednesday, November 08, 2017

Hearing Room 303

11:00 AM

CONT... Jesus Ramirez Guillen and Yovana Mondagron Guillen

Chapter 7

DISCUSSION

11 U.S.C. § 110(j)(3) states: "The court, as part of its contempt power, may enjoin a bankruptcy petition preparer that has failed to comply with a previous order issued under this section. The injunction under this paragraph may be issued on the motion of the court, the trustee, or the United States trustee."

As noted by UST, in order to obtain civil contempt sanctions, a movant must demonstrate: (1) violation of a court order; (2) beyond substantial compliance; (3) not based on a good faith and reasonable interpretation of the order; and (4) by clear and convincing evidence. *See Labor/Cnty. Strategy Ctr. V. L.A. Cnty. Metro. Transp. Auth.*, 564 F.3d 1115, 1123 (9th Cir. 2009). As is evidenced by the docket and UST's motion, Laguna has failed to comply with the Court's order. The Court's order was simple and unambiguous, and there is clear and convincing evidence that Laguna has not complied. Therefore, the Court will issue the requested injunction.

11 U.S.C. § 110(h)(5) states: "A bankruptcy petition preparer shall be fined not more than \$500 for each failure to comply with a court order to turn over funds within 30 days of service of such order." Here, the Court's order was entered over six months ago, and was straightforward, requiring payment of a total of \$350. The order was entered in response to a stipulation between UST and Laguna, and, therefore, Laguna was certainly aware of the order.

TENTATIVE RULING

The Court is inclined to GRANT the motion to the extent that the motion seeks an injunction enjoining Laguna from providing bankruptcy preparer services. Parties to address Laguna's compliance with payment obligations.

**United States Bankruptcy Court
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Hearing Room 303

11:00 AM

6:15-20888 Walter Ray Henderson and Anne Budell Henderson

Chapter 7

#12.00 Chapter 7 Trustees Motion for Order Directing Turnover of Property of the Estate (Non-Exempt Retainer Funds)

EH__

Docket 54

***** VACATED *** REASON: ORDER WITHDRAWING MOTION
FILED 10/31/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Walter Ray Henderson

Represented By
Alec L Harshey

Joint Debtor(s):

Anne Budell Henderson

Represented By
Alec L Harshey

Movant(s):

Lynda T. Bui (TR)

Pro Se

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, November 08, 2017

Hearing Room 303

11:00 AM

6:17-17749 Joshua Cord Richardson

Chapter 7

#13.00 Status Conference RE: [1] Chapter 7 Involuntary Petition Against an Individual
EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joshua Cord Richardson

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 08, 2017

Hearing Room 303

2:00 PM

6:17-16272 Martha Lorena Soto Jimenez

Chapter 7

Adv#: 6:17-01191 Frealy v. Cebadas et al

#14.00 Status Conference RE: [1] Adversary case 6:17-ap-01191. Complaint by Todd A. Frealy against Armando Cebadas, Jose Alfredo Cebadas Soto, Victor Armando Cebadas Soto, Martha Lorena Soto Jimenez. (Charge To Estate). (Attachments: # 1 Adversary Coversheet) Nature of Suit: (91 (Declaratory judgment)),(14 (Recovery of money/property - other)),(13 (Recovery of money/property - 548 fraudulent transfer)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property))(Pagay, Carmela)

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martha Lorena Soto Jimenez

Represented By
Marlin Branstetter

Defendant(s):

Armando Cebadas

Pro Se

Jose Alfredo Cebadas Soto

Pro Se

Victor Armando Cebadas Soto

Pro Se

Martha Lorena Soto Jimenez

Pro Se

Plaintiff(s):

Todd A. Frealy

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
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Wednesday, November 08, 2017

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2:00 PM

CONT... Martha Lorena Soto Jimenez

Chapter 7

Trustee(s):

Todd A. Frealy (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Wednesday, November 08, 2017

Hearing Room 303

2:00 PM

6:17-13649 Fernando Fabrigas, Sr.

Chapter 7

Adv#: 6:17-01156 Daff v. Fabrigas, Jr.

#15.00 Status Conference RE: [1] Adversary case 6:17-ap-01156. Complaint by Charles W. Daff against Fernando Fabrigas, Jr.. (Charge To Estate \$350.00). for: 1) Avoidance of Intentional Fraudulent Transfers and Recovery of Same [11 U.S.C. §§ 544, 548, 550, 551; CAL. CIV. CODE §§ 3439.04, 3439.07, 3439.08]; 2) Avoidance of Constructive Fraudulent Transfers and Recovery of Same [11 U.S.C. §§ 544, 548, 550, 551; CAL. CIV. CODE §§ 3439.04, 3439.05, 3439.07, 3439.08, 3439.09]; 3) Disallowance of Claims [11 U.S.C. §502(d)]; 4) Unjust Enrichment [11 U.S.C. § 105]; 5) Declaratory Relief [11 U.S.C. §§ 541, 544; FRBP 7001(9)]; AND 6) Turnover of Property of the Estate [11 U.S.C. § 542] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)) (Iskander, Brandon)

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fernando Fabrigas Sr.

Represented By
R Creig Greaves

Defendant(s):

Fernando Fabrigas, Jr.

Pro Se

Joint Debtor(s):

Estela F. Fabrigas

Represented By
R Creig Greaves

Plaintiff(s):

Charles W. Daff

Represented By

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CONT... Fernando Fabrigas, Sr.

Chapter 7

Brandon J Iskander

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Brandon J Iskander

**United States Bankruptcy Court
Central District of California
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Wednesday, November 08, 2017

Hearing Room 303

2:00 PM

6:16-15419 Francisco Javier Castillo

Chapter 7

Adv#: 6:16-01310 Swift Financial Corporation d.b.a. Swift Capital v. Castillo

#16.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01310. Complaint by Swift Financial Corporation d.b.a. Swift Capital against Francisco Javier Castillo (willful and malicious injury)

From: 5/3/17, 9/13/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco Javier Castillo

Represented By
Joseph M Tosti

Defendant(s):

Francisco Javier Castillo

Pro Se

Plaintiff(s):

Swift Financial Corporation d.b.a.

Represented By
Lazaro E Fernandez

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, November 08, 2017

Hearing Room 303

2:00 PM

6:14-14377 Hilary D Hill

Chapter 7

Adv#: 6:17-01190 Speier v. U.S. Trust, Bank of America Private Wealth Managem

#17.00 Status Conference RE: [1] Adversary case 6:17-ap-01190. Complaint by Steven M Speier against U.S. Trust, Bank of America Private Wealth Management, Hilary D Hill. (Charge To Estate- \$350.00). Complaint for Declaratory Relief re Alter Ego Liability of the Marion Newhall Hill Trust Nature of Suit: (71 (Injunctive relief - reinstatement of stay))

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hilary D Hill

Represented By
Matthew D Resnik
David Brian Lally

Defendant(s):

U.S. Trust, Bank of America Private

Represented By
Benjamin Nachimson

Hilary D Hill

Represented By
David Brian Lally

Plaintiff(s):

Steven M Speier

Represented By
Robert P Goe
Donald Reid

Trustee(s):

Steven M Speier (TR)

Represented By
Robert P Goe

**United States Bankruptcy Court
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CONT...

Hilary D Hill

Elizabeth A LaRocque

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, November 08, 2017

Hearing Room 303

2:00 PM

6:13-30477 Master Design Inc

Chapter 7

Adv#: 6:15-01370 Speier v. Test-Rite Products Corp. et al

#18.00 CONT Status Conference Re: Complaint by Steven M Speier against Test-Rite Products Corp., Test-Rite International (U.S) Co. Ltd., Test-Rite International Co. Ltd., Judy Lee, Chester Lee, Christina Ma. (Charge To Estate). Complaint for: (1) Fraudulent Transfer Pursuant to 11 U.S.C. § 544(b) and Cal. Civ. Code § 3439.04(a)(1) and Recovery of Avoided Transfers Pursuant to 11 U.S.C. § 550; (2) Fraudulent Transfer Pursuant to 11 U.S.C. § 548(a)(1)(A) and Recovery of Avoided Transfers Pursuant to 11 U.S.C. § 550; (3) Fraudulent Transfer Pursuant to 11 U.S.C. § 544(b) and Cal. Civ. Code §§ 3439.04(a)(2), 3439.05 and Recovery of Avoided Transfers Pursuant to 11 U.S.C. § 550; (4) Fraudulent Transfer Pursuant to 11 U.S.C. § 548(a)(1)(B) and Recovery of Avoided Transfers Pursuant to 11 U.S.C. § 550; (5) Conversion; (6) Unlawful Payment of Dividends; (7) Breach of Fiduciary Duty by Officer; (8) Breach of Fiduciary Duty by Controlling Shareholder; and (9) Declaratory Relief as to Alter Ego Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 3/2/16, 4/6/16, 4/27/16, 6/29/16, 7/20/16, 8/3/16, 9/28/16, 11/9/16, 3/29/17, 8/2/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 1/10/18 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Master Design Inc

Represented By
Eric M Sasahara
John Y Kim

Defendant(s):

Test-Rite Products Corp.

Represented By

**United States Bankruptcy Court
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CONT... Master Design Inc

Chapter 7

Julie A Garcia
John Y Kim
Aaron S Craig
Brian Wheeler

Test-Rite International (U.S) Co.

Represented By
Julie A Garcia
John Y Kim
Aaron S Craig

Test-Rite International Co. Ltd.

Represented By
Julie A Garcia
Aaron S Craig
Joon M Khang
John Y Kim
Brian Wheeler

Chester Lee

Represented By
Julie A Garcia
Joon M Khang
Aaron S Craig
Brian Wheeler

Christina Ma

Represented By
Julie A Garcia
Joon M Khang
Aaron S Craig
Brian Wheeler

Test-Rite International (US) Co. Ltd.

Represented By
Joon M Khang
Julie A Garcia
John Y Kim
Aaron S Craig
Brian Wheeler

Test-Rite Products Corp.

Represented By
Joon M Khang
Julie A Garcia

**United States Bankruptcy Court
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CONT... Master Design Inc

Chapter 7

John Y Kim
Aaron S Craig

Plaintiff(s):

Steven M Speier

Represented By
Robert P Goe
Marc C Forsythe

Trustee(s):

Steven M Speier (TR)

Represented By
Robert P Goe
Marc C Forsythe
Donald Reid

**United States Bankruptcy Court
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Wednesday, November 08, 2017

Hearing Room 303

2:00 PM

6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01163 Revere Financial Corporation v. Burns

#19.00 CONT Motion to Dismiss Adversary Proceeding re First Amended Complaint

From: 8/2/17, 8/23/17

Also #20

EH__

Docket 36

Tentative Ruling:

8/23/17

BACKGROUND

On June 23, 2016, Revere Financial Corporation ("Revere") filed a complaint against Don Burns ("Burns"), and, on June 30, 2016, the complaint was amended. After Burns failed to answer or otherwise respond to the complaint, the clerk entered default against Burns on November 16, 2016.

On April 21, 2017, Revere filed a motion for default judgment. On May 4, 2017, Burns filed a motion to set aside default and an answer. On May 24, 2017, Revere filed its opposition to the motion to set aside default. At a hearing on June 7, 2017, the Court instructed the parties that it would conditionally grant the motion to set aside default upon payment of reasonable costs, and requested further briefing regarding Revere's costs incurred as a result of Burns's delay. At a continued hearing on July 12, 2017, after the Court posted a tentative ruling reducing the fees requested by Revere, the Court continued the motion to set aside default to allow further briefing from parties. The fee dispute has not yet been resolve and no order has been entered

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CONT... **Douglas Jay Roger**
related to the motion to set aside default.

Chapter 7

On June 30, 2017, Burns filed a motion to dismiss. On August 9, 2017, Revere filed their opposition to the motion to dismiss.

DISCUSSION

Despite the fact that Burns is still in default, neither party has briefed the impact of that status on Burns's motion to dismiss. A legal scholar previous wrote that "the defaulting party loses his standing to contest the truth of all facts that are 'well-pleaded' in the non-defaulting party's complaint." Peter H. Bresnan & James P. Cornelio, *Relief from Default Judgments Under Rule 60(b) – A Study of Federal Case Law*, 49 Fordham L. Rev. 956, 959-60 (1981) (collecting cases); *see also Thomson v. Wooster*, 114 U.S. 104, 112-14 (1885) ("From the authorities cited, and the express language of our own rules in equity, it seems clear that the defendants, after the entry of the decree *pro confesso*, and while it stood unrevoked, were absolutely barred and precluded from alleging anything in derogation of, or in opposition to, the said decree, and that they are equally barred, and precluded from questioning its correctness here on appeal, unless on the face of the bill it appears manifest that it was erroneous and improperly granted."). Burns's motion to dismiss raises a legal argument, however, not a factual argument.

Courts appear willing to simultaneously grant motions to set aside default and dismiss the case. *See, e.g., Mineo Yoshida v. Daikokuya Co., Ltd.*, 2008 WL 11338257 (C.D. Cal. 2007). Other courts have been more specific with regard to the order in which the motion to set aside default and the motion to dismiss must be considered. *See Everest Indem. Ins. Co. v. Demarco*, 2013 WL 12136578 at *2 (C.D. Cal. 2013) ("Before the Court can consider their motion to dismiss, the default must be set aside pursuant to Fed. R. Civ. P. Rule 55(c)."). Where, as is the case here, the Court has merely orally indicated that it will set aside default upon the occurrence of a condition which has not yet been defined, and may or may not come to pass, the Court considers it improper to rule on the motion to dismiss. Therefore, the Court will continue the matter for Burns to obtain a setting aside of the default.

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2:00 PM

CONT... Douglas Jay Roger

Chapter 7

TENTATIVE RULING

The Court is inclined to CONTINUE the matter for fee payment, if any, to be made, and an order to be entered setting aside the default.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Don Cameron Burns

Represented By
Don C Burns

Movant(s):

Don Cameron Burns

Represented By
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns
Don C Burns

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

**United States Bankruptcy Court
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2:00 PM

CONT... Douglas Jay Roger

Chapter 7

Trustee(s):

Helen R. Frazer (TR)

Represented By

Laurel R Zaeske

Arjun Sivakumar

Carmela Pagay

Franklin R Fraley Jr

**United States Bankruptcy Court
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2:00 PM

6:13-27611 Douglas Jay Roger

Chapter 7

Adv#: 6:16-01163 Revere Financial Corporation v. Burns

#20.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01163. Complaint by Revere Financial Corporation against Don C. Burns. (12 (Recovery of money/property - 547 preference)),(11 (Recovery of money/property - 542 turnover of property)),(14 (Recovery of money/property - other)),(91 (Declaratory judgment))

From: 8/31/16, 11/2/16, 1/11/17, 3/8/17, 6/7/17, 8/2/17, 8/23/17

Also #19

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Jay Roger

Represented By
Summer M Shaw

Defendant(s):

Don Cameron Burns

Represented By
Don C Burns

Plaintiff(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Trustee(s):

Helen R. Frazer (TR)

Represented By
Laurel R Zaeske
Arjun Sivakumar

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2:00 PM

CONT...

Douglas Jay Roger

Carmela Pagay
Franklin R Fraley Jr

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, November 09, 2017

Hearing Room 303

12:30 PM

6:12-36522 Jacquelyn Anna Palmer

Chapter 13

#1.00 Motion Re: Objection to Claim #7 by Claimant Tidewater Finance Company T/A
Tidewater Motor Credit & Tidewater Credit Services

EH__

Docket 76

Tentative Ruling:

11/09/2017

Background:

On November 30, 2012 ("Petition Date"), Jacquelyn Anna Palmer ("Debtor") filed for chapter 13 relief. Amrane Cohen is the duly appointed chapter 13 trustee ("Trustee"). On September 27, 2017, Debtor filed her Objection to Claims # 7-1 of Tidewater Finance Company ("Claimant").

Service was proper and no opposition or response has been filed.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *United States v. Offord*

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CONT... **Jacquelyn Anna Palmer**

Chapter 13

Fin., Inc., (In re Medina), 205 B.R. 216,222 (9th Cir. BAP 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (quoting *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (quoting *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *Ashford v. Consol. Pioneer Mort. (In re Consol. Pioneer Mort.)*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (quoting *Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *Lundell*, 223 F.3d at 1039; *Holm*, 931 F.2d at 623.

Analysis:

The Debtor objects only to the "secured" portion of Claim No. 7-1. Specifically, the Debtor asserts, without legal citation or authority, that because she "gave her furniture to a co-worker who had lost everything in a fire" and is "no longer in possession of the furniture" the secured amount should be disallowed.

Tentative Ruling

Having failed to provide legal authority for the proposition that the gifting of property subject to a security interest suffices to extinguish such lien, the tentative ruling is that the Objection be OVERRULED.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jacquelyn Anna Palmer

Represented By
Steven A Alpert

Movant(s):

**United States Bankruptcy Court
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12:30 PM

CONT... **Jacquelyn Anna Palmer**
Jacquelyn Anna Palmer

Represented By
Steven A Alpert

Chapter 13

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
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Thursday, November 09, 2017

Hearing Room 303

12:31 PM

6:12-23627 Michael L Anderson

Chapter 13

#2.00 CONT Trustee's Motion to Dismiss Case Due to Material Default or to Reconvert Case to Chapter 7

From: 9/14/17

EH__

Docket 154

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael L Anderson

Represented By
Javier H Castillo

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
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Thursday, November 09, 2017

Hearing Room 303

12:31 PM

6:12-27553 Mary Black-Williams

Chapter 13

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

EH__

Docket 56

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mary Black-Williams

Represented By
Marjorie M Johnson

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, November 09, 2017

Hearing Room 303

12:31 PM

6:12-34375 Arthur D Garcia and Kathy L Garcia

Chapter 13

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

EH__

Docket 47

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arthur D Garcia

Represented By
James T Lillard

Joint Debtor(s):

Kathy L Garcia

Represented By
James T Lillard

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:31 PM

6:12-35294 Penelope Ann Young

Chapter 13

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

EH__

Docket 71

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Penelope Ann Young

Pro Se

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:31 PM

6:12-37439 Victor M. Menez and Marilee J. Menez

Chapter 13

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

EH__

Docket 62

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victor M. Menez

Represented By

Dale Parham - INACTIVE -

Michael Smith

Sundee M Teeple

Joint Debtor(s):

Marilee J. Menez

Represented By

Dale Parham - INACTIVE -

Michael Smith

Sundee M Teeple

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, November 09, 2017

Hearing Room 303

12:32 PM

6:16-18182 Douglas Edward Goodman and Anne Louise Goodman

Chapter 13

#7.00 CONT Motion RE: Objection to Claim Number 11 by Claimant Natasha Reynoso and Mark Reynoso
HOLDING DATE

From: 5/4/17, 8/24/17, 8/31/17, 9/14/17

EH__

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Movant(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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CONT... Douglas Edward Goodman and Anne Louise Goodman

Chapter 13

**United States Bankruptcy Court
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Thursday, November 09, 2017

Hearing Room 303

12:32 PM

6:16-18182 Douglas Edward Goodman

Chapter 13

Adv#: 6:16-01277 Reynoso v. Goodman et al

#8.00 CONT Status Conference RE: [26] Crossclaim by Anne Louise Goodman, Douglas Edward Goodman against all defendants

From: 8/31/17, 9/14/17

Also #9

EH__

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Defendant(s):

Douglas Edward Goodman

Represented By
Edward T Weber

Anne Louise Goodman

Represented By
Edward T Weber

Theresa Mann

Represented By
Andrew L Leff

Jose Pastora

Represented By
Andrew L Leff

Joint Debtor(s):

Anne Louise Goodman

Represented By

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CONT... Douglas Edward Goodman

Chapter 13

Samer A Nahas
Edward T Weber

Plaintiff(s):

Mark & Natasha Reynoso

Represented By
Michael J Hemming

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:16-18182 Douglas Edward Goodman

Chapter 13

Adv#: 6:16-01277 Reynoso v. Goodman et al

#9.00 CONT Status Conference RE: [13] Amended Complaint by Michael J Hemming on behalf of Mark & Natasha Reynoso against Anne Louise Goodman, Douglas Edward Goodman. (RE: related document(s)1 Adversary case 6:16-ap-01277. Complaint by Mark & Natasha Reynoso against Douglas Edward Goodman, Anne Louise Goodman. false pretenses, false representation, actual fraud) filed by Plaintiff Mark & Natasha Reynoso)
(Holding Date)

From: 5/4/17, 8/24/17, 8/31/17, 9/14/17

Also #8

EH__

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Defendant(s):

Douglas Edward Goodman

Represented By
Edward T Weber

Anne Louise Goodman

Represented By
Edward T Weber

Theresa Mann

Represented By
Andrew L Leff

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CONT... Douglas Edward Goodman

Chapter 13

Jose Pastora

Represented By
Andrew L Leff

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Plaintiff(s):

Mark & Natasha Reynoso

Represented By
Michael J Hemming

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Hearing Room 303

12:32 PM

6:16-20260 Javier Lopez

Chapter 13

Adv#: 6:17-01054 Amarillo College of Hairdressing, Inc. v. Lopez

#10.00 Motion for Leave to File First Amended Complaint

Also #11

EH__

Docket 24

Tentative Ruling:

11/09/2017

BACKGROUND

On November 18, 2016, Javier and Carmen Lopez (collectively, "Debtors") filed a Chapter 13 voluntary petition. On March 6, 2017, Amarillo College of Hairdressing, Inc. ("Plaintiff") filed a non-dischargeability complaint against Debtors. No answer has been filed.

Plaintiff specifically seeks to amend the complaint to join the Javier Lopez's wife as a co-defendant and asserts that the amendment will not include changes to the factual allegations or claims. Service of the Motion was proper and no opposition has been filed.

DISCUSSION

Fed. R. Civ. P. Rule 15(a)(1)-(2) states:

(1) A party may amend its pleading once as a matter of course within:

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CONT...

Javier Lopez

Chapter 13

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f) whichever is earlier

(2) In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Here, the standard of Fed. R. Civ. P. Rule 15(a)(2) applies.

As is noted by Plaintiff, "leave to amend should be granted unless amendment would cause prejudice to the opposing party, is sought in bad faith, is futile, or creates undue delay." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992).

Here, Plaintiff has timely moved to amend its complaint. There is no indication of bad faith on the part of Plaintiff and Debtors have not argued that leave to amend would be prejudicial. The Federal Rules of Civil Procedure instruct the Court to "freely give leave when justice so requires." Here, where Plaintiff has promptly moved to amend the complaint prior to the filing of any responsive pleading by the Defendant, justice requires the Court grant leave to amend.

TENTATIVE RULING

The Court is inclined to GRANT the motion. Plaintiff to lodge an order indicating that the Motion is granted and that the Clerk of Court shall issue an alias summons to be served on Carmen Lopez by the Plaintiff.

APPEARANCES REQUIRED.

Party Information

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CONT... Javier Lopez

Chapter 13

Debtor(s):

Javier Lopez

Represented By
Christopher Hewitt

Defendant(s):

Javier Lopez

Represented By
Christopher Hewitt

Joint Debtor(s):

Carmen Lopez

Represented By
Christopher Hewitt

Movant(s):

Amarillo College of Hairdressing,

Represented By
Eamon Jafari

Plaintiff(s):

Amarillo College of Hairdressing,

Represented By
Eamon Jafari

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:32 PM

6:16-20260 Javier Lopez

Chapter 13

Adv#: 6:17-01054 Amarillo College of Hairdressing, Inc. v. Lopez

#11.00 CONT Status Conference Re: Complaint by Amarillo College of Hairdressing, Inc., against Javier Lopez. false pretenses, false representation, actual fraud, 67 - Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 68 - Dischargeability - 523(a)(6), willful and malicious injury

From: 5/11/17, 6/22/17, 8/17/17, 10/19/17

Also #10

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Javier Lopez

Represented By
Christopher Hewitt

Defendant(s):

Javier Lopez

Represented By
Christopher Hewitt

Joint Debtor(s):

Carmen Lopez

Represented By
Christopher Hewitt

Plaintiff(s):

Amarillo College of Hairdressing,

Represented By
Eamon Jafari

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CONT... Javier Lopez

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:32 PM

6:17-15227 John E Neilsen, Sr and Kathy A Neilsen

Chapter 13

#12.00 CONT Motion to Avoid Junior Lien with Dreambuilder Investments LLC Serviced By Trojan Capital Investments LLC

From: 9/21/17, 10/5/17

Also #13

EH__

Docket 24

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/2/17

Tentative Ruling:

9/21/17

TENTATIVE

The Court having reviewed the motion, finding notice and service to be proper and reviewed the opposition, the Court is inclined to DENY the motion without prejudice. Specifically, as is noted in the opposition, Debtors have not submitted evidence which clearly establishes the amount owing on the senior security interest. Debtors have submitted a payoff quote, dated July 20, 2017, which states that the total amount due is \$347,890.95. Debtors have additionally submitted a letter, dated May 17, 2017, which states that the remaining deferred principal amount is \$129,872.54. Debtors' motion adds the two above amounts together, and asserts that the sum is the total amount due.

Nevertheless, the relationship between the two documents submitted by Debtors is unclear. The payoff quote submitted is dated approximately two months later than the letter, and, therefore, the letter cannot refer to the payoff quote. Because of this lack of clarity, Debtors have not established the amount owing on the senior security interest.

APPEARANCES REQUIRED.

Party Information

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CONT... John E Neilsen, Sr and Kathy A Neilsen

Chapter 13

Debtor(s):

John E Neilsen Sr

Represented By
Julie J Villalobos

Joint Debtor(s):

Kathy A Neilsen

Represented By
Julie J Villalobos

Movant(s):

John E Neilsen Sr

Represented By
Julie J Villalobos

Kathy A Neilsen

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:32 PM

6:17-15227 John E Neilsen, Sr and Kathy A Neilsen

Chapter 13

#13.00 CONT Confirmation of Chapter 13 Plan

From: 7/27/17, 8/17/17, 9/21/17, 10/5/17

Also #12

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John E Neilsen Sr

Represented By
Julie J Villalobos

Joint Debtor(s):

Kathy A Neilsen

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:32 PM

6:17-17477 Oracio Rosales Hernandez

Chapter 13

#14.00 Motion For Order Compelling Attorney To File Disclosure Of Compensation Pursuant To 11 U.S.C. § 329 And Federal Rule Of Bankruptcy Procedure 2016
CASE DISMISSED 9/26/17

EH__

Docket 24

Tentative Ruling:

11/09/2017

BACKGROUND

On September 6, 2017, Oracio Hernandez ("Debtor") filed for chapter 13 relief.

The petition reflects that Debtor was assisted with the instant filing by the Law Office of Aalok Sikand ("Counsel"). On September 26, 2017, the case was dismissed for failure of the Debtor to file schedules.

On October 2, 2017, the Office of the United States Trustee ("UST") filed its Notice of Motion and Motion for Order Compelling Attorney to File Disclosure of compensation Pursuant to 11 U.S.C. § 329 ("Motion"). Service was proper and the Motion is unopposed.

DISCUSSION

Section 329(a) provides, in pertinent part that:
Any attorney representing a debtor in a case under this title, or in

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CONT...

Oracio Rosales Hernandez

Chapter 13

connection with such a case, whether or not such attorney applies for compensation under this title, **shall** file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation

11 U.S.C. § 329(a).

The UST indicates that Counsel failed to file a Statement of Attorney Compensation (Ex. 3), which thereby prevents the Court and parties in interest an opportunity to review the reasonableness of the fees charged. Moreover, section 329 is a mandatory provision of the code.

TENTATIVE RULING

Based on the foregoing, the Motion is GRANTED in its entirety. Counsel is ordered to file a Statement of Attorney Compensation and the Court shall continue to retain jurisdiction over issues relating to § 329 arising from the instant Motion.

Party Information

Debtor(s):

Oracio Rosales Hernandez

Represented By
Aalok Sikand

Movant(s):

United States Trustee (RS)

Represented By
Abram Feuerstein esq

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-18212 Eugene Myers and Deborah Myers

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eugene Myers

Represented By
Paul Y Lee

Joint Debtor(s):

Deborah Myers

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18230 Ricardo Munoz and Roseann Munoz

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricardo Munoz

Represented By
Michael E Clark

Joint Debtor(s):

Roseann Munoz

Represented By
Michael E Clark

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-18232 Maria Leticia Estrada

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Leticia Estrada

Represented By
Raymond Perez

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:32 PM

6:17-18258 Francisco R Tamayo

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco R Tamayo

Represented By
Alla Tenina

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-18277 Lauren Nicole Pancucci

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lauren Nicole Pancucci

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:32 PM

6:17-18290 Arnel L Ganzon

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arnel L Ganzon

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-18306 Maisha Tamu Mesa

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maisha Tamu Mesa

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18316 Julio C. Davila

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julio C. Davila

Represented By
Michael Jay Berger

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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12:32 PM

6:17-18366 Kisha Eugena Stegall-Hill

Chapter 13

#23.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kisha Eugena Stegall-Hill

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:33 PM

6:13-19250 Robert B Eppley

Chapter 13

#24.00 Trustee's Motion to Dismiss Case

EH__

Docket 81

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert B Eppley

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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12:33 PM

6:13-21894 Francisco Javier Medina and Maria Guadalupe Medina

Chapter 13

#25.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 8/31/17, 10/5/17

EH__

Docket 134

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco Javier Medina

Represented By
Tamar Terzian

Joint Debtor(s):

Maria Guadalupe Medina

Represented By
Tamar Terzian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Hearing Room 303

12:33 PM

6:13-28504 LARON P TAYLOR

Chapter 13

#26.00 Trustee's Motion to Dismiss Case

EH__

Docket 73

*** VACATED *** REASON: WITHDRAWAL OF MOTION FLD
11/7/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

LARON P TAYLOR

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Hearing Room 303

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6:14-10795 Agnes Smith

Chapter 13

#27.00 Trustee's Motion to Dismiss Case

EH__

Docket 74

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/3/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Agnes Smith

Represented By
James T Lillard

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Hearing Room 303

12:33 PM

6:14-14265 Ricardo Pimentel and Maria Pimentel

Chapter 13

#28.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 8/31/17, 9/14/17, 10/5/17

EH__

Docket 50

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricardo Pimentel

Represented By
Tamar Terzian

Joint Debtor(s):

Maria Pimentel

Represented By
Tamar Terzian

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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Hearing Room 303

12:33 PM

6:14-23388 Jose N Recinos and Patricia Recinos

Chapter 13

#29.00 Trustee's Motion to Dismiss Case

EH__

Docket 245

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose N Recinos

Represented By
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Patricia Recinos

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:33 PM

6:15-15868 Jackqueline D Mitchell

Chapter 13

#30.00 CONT Trustee's Motion to Dismiss Case

From: 10/5/17

EH__

Docket 36

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/8/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jackqueline D Mitchell

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:33 PM

6:15-20134 Eugene S Aguirre

Chapter 13

#31.00 Trustee's Motion to Dismiss Case

EH__

Docket 68

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/8/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eugene S Aguirre

Represented By
James T Lillard

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

12:33 PM

6:16-12963 Kenneth L Salser

Chapter 13

#32.00 Trustee's Motion to Dismiss Case

EH__

Docket 30

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth L Salser

Represented By
Michael Smith
Craig K Streed
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, November 09, 2017

Hearing Room 303

12:33 PM

6:16-14087 Donald L Maddox and Lisa A Maddox

Chapter 13

#33.00 Trustee's Motion to Dismiss Case

EH__

Docket 66

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald L Maddox

Represented By
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Lisa A Maddox

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 09, 2017

Hearing Room 303

12:33 PM

6:17-10742 William Fuentes and Martha C Orozco de Fuentes

Chapter 13

#34.00 Trustee's Motion to Dismiss Case

EH__

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Fuentes

Represented By
Marlin Branstetter

Joint Debtor(s):

Martha C Orozco de Fuentes

Represented By
Marlin Branstetter

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 09, 2017

Hearing Room 303

12:33 PM

6:17-12420 Frank Castodio

Chapter 13

#35.00 Trustee's Motion to Dismiss Case

EH__

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Castodio

Represented By
Lauren Rode

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 09, 2017

Hearing Room 303

12:33 PM

6:17-13063 Ethel N Odimegwu

Chapter 13

#36.00 Trustee's Motion to Dismiss Case

EH__

Docket 40

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ethel N Odimegwu

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 09, 2017

Hearing Room 303

12:33 PM

6:17-14289 Michael Robert Tucker

Chapter 13

#37.00 Trustee's Motion to Dismiss Case

EH__

Docket 23

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Robert Tucker Pro Se

Trustee(s):

Rod (MH) Danielson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

11:00 AM

6:14-18549 Matthew Joseph Pautz and Alice Louise Pautz

Chapter 7

#1.00 CONT Order to Show Cause re Bodily Detention Order

From: 8/15/17, 9/18/17, 10/18/17

EH__

Docket 135

Party Information

Debtor(s):

Matthew Joseph Pautz

Represented By
Todd L Turoci
Julie Philippi

Joint Debtor(s):

Alice Louise Pautz

Represented By
Todd L Turoci
Julie Philippi

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Samuel J Romero

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:13-10251 Brandon Kent Blevins and Teresa Taylor Blevins

Chapter 13

#2.00 Trustee's Motion to Dismiss Case

EH__

Docket 216

Party Information

Debtor(s):

Brandon Kent Blevins

Represented By
Raj T Wadhvani

Joint Debtor(s):

Teresa Taylor Blevins

Represented By
Raj T Wadhvani

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:13-12182 Stacey Jo West

Chapter 13

#3.00 Trustee's Motion to Dismiss Case

EH__

Docket 153

Party Information

Debtor(s):

Stacey Jo West

Represented By
Arnold H Wuhrman

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:13-13116 Juana Judith Mejia

Chapter 13

#4.00 Trustee's Motion to Dismiss Case

EH__

Docket 110

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/13/17**

Party Information

Debtor(s):

Juana Judith Mejia

Represented By
Javier H Castillo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:13-15321 John Douglas Bacon and Monica Marie Bacon

Chapter 13

#5.00 Trustee's Motion to Dismiss Case

EH__

Docket 46

Party Information

Debtor(s):

John Douglas Bacon

Represented By
Andrew Moher

Joint Debtor(s):

Monica Marie Bacon

Represented By
Andrew Moher

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:13-16453 Steven L Ross

Chapter 13

#6.00 Trustee's Motion to Dismiss Case

EH__

Docket 91

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/17**

Party Information

Debtor(s):

Steven L Ross

Represented By
Manfred Schroer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:13-19471 Adam Lee Miederhoff and Cheri Catherine Miederhoff

Chapter 13

#7.00 Trustee's Motion to Dismiss Case

EH__

Docket 65

Party Information

Debtor(s):

Adam Lee Miederhoff

Represented By
Dana Travis

Joint Debtor(s):

Cheri Catherine Miederhoff

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:13-28068 Clarence White

Chapter 13

#8.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 143

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/2/17**

Party Information

Debtor(s):

Clarence White

Represented By
Steven A Wolvek

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:13-28940 Jose Castellanos and Hiliana Castellanos

Chapter 13

#9.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 80

Party Information

Debtor(s):

Jose Castellanos

Represented By
Mark E Brenner

Joint Debtor(s):

Hiliana Castellanos

Represented By
Mark E Brenner

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:13-30641 Jacob J Cannon and Danielle M Cannon

Chapter 13

#10.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 65

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/7/17**

Party Information

Debtor(s):

Jacob J Cannon

Represented By
Lisa H Robinson
John F Brady

Joint Debtor(s):

Danielle M Cannon

Represented By
Lisa H Robinson
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:14-17561 Percival Inciong

Chapter 13

#11.00 Trustee's Motion to Dismiss Case

EH__

Docket 57

Party Information

Debtor(s):

Percival Inciong

Represented By
Brian C Miles

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:14-19029 Sheila Marie Dejesa

Chapter 13

#12.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 66

Party Information

Debtor(s):

Sheila Marie Dejesa

Represented By
Lisa H Robinson
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:14-24084 Michael Lee Barnes and Belinda Ann Barnes

Chapter 13

#13.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 81

Party Information

Debtor(s):

Michael Lee Barnes

Represented By
Todd L Turoci

Joint Debtor(s):

Belinda Ann Barnes

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:14-24314 Timm Bruce Bennett

Chapter 13

#14.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 69

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
7/31/17**

Party Information

Debtor(s):

Timm Bruce Bennett

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:14-25360 William Meineke and Kathie Meineke

Chapter 13

#15.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 64

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/1/17**

Party Information

Debtor(s):

William Meineke

Represented By
Todd B Becker

Joint Debtor(s):

Kathie Meineke

Represented By
Todd B Becker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:15-10421 Juan C Rodriguez and Cynthia J Rodriguez

Chapter 13

#16.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 77

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/10/17**

Party Information

Debtor(s):

Juan C Rodriguez

Represented By
Michael Smith

Joint Debtor(s):

Cynthia J Rodriguez

Represented By
Michael Smith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:15-10660 Patricia Eagan

Chapter 13

#17.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 53

Party Information

Debtor(s):

Patricia Eagan

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:15-10929 Christopher John Helme

Chapter 13

#18.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 144

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/23/17**

Party Information

Debtor(s):

Christopher John Helme

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:15-11104 Joe A Pickens, II

Chapter 13

#19.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 74

Party Information

Debtor(s):

Joe A Pickens II

Represented By
William Radcliffe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:15-13346 Chris Maddox and Christie Michelle Maddox

Chapter 13

#20.00 Trustee's Motion to Dismiss Case

EH__

Docket 62

Party Information

Debtor(s):

Chris Maddox

Represented By
Sanaz S Bereliani

Joint Debtor(s):

Christie Michelle Maddox

Represented By
Sanaz S Bereliani

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:15-15522 Scott Allan Oswald and Lisa Frances Oswald

Chapter 13

#21.00 Trustee's Motion to Dismiss Case

EH__

Docket 66

Party Information

Debtor(s):

Scott Allan Oswald

Represented By
Richard Lynn Barrett

Joint Debtor(s):

Lisa Frances Oswald

Represented By
Richard Lynn Barrett

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:15-15624 Ricardo Fabian Zorrilla

Chapter 13

#22.00 Trustee's Motion to Dismiss Case

EH__

Docket 86

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/22/17**

Party Information

Debtor(s):

Ricardo Fabian Zorrilla

Represented By
Jeffrey N Wishman
Leon D Bayer

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:15-18139 Randall Meier

Chapter 13

#23.00 Trustee's Motion to Dismiss Case (Tax Returns/Refunds)

EH__

Docket 105

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/16/17**

Party Information

Debtor(s):

Randall Meier

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:15-18734 Eduardo Javier Meza and Margaret Ruth Morales

Chapter 13

#24.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 173

Party Information

Debtor(s):

Eduardo Javier Meza

Represented By
Dana Travis

Joint Debtor(s):

Margaret Ruth Morales

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:15-18942 Genaro Flores and Salome Flores

Chapter 13

#25.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 75

Party Information

Debtor(s):

Genaro Flores

Represented By
Luis G Torres

Joint Debtor(s):

Salome Flores

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:15-19374 Edgardo Aranda and Kelley Aranda

Chapter 13

#26.00 Trustee's Motion to Dismiss Case

EH__

Docket 72

Party Information

Debtor(s):

Edgardo Aranda

Represented By
Paul Y Lee

Joint Debtor(s):

Kelley Aranda

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:15-20006 Carl J Charlot and Jacinta S Charlot

Chapter 13

#27.00 Trustee's Motion to Dismiss Case

EH__

Docket 50

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
9/18/17**

Party Information

Debtor(s):

Carl J Charlot

Represented By
Michael A Younge

Joint Debtor(s):

Jacinta S Charlot

Represented By
Michael A Younge

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:15-20134 Eugene S Aguirre

Chapter 13

#28.00 Trustee's Motion to Dismiss Case

EH__

Docket 65

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/17/17**

Party Information

Debtor(s):

Eugene S Aguirre

Represented By
James T Lillard

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:15-20998 Eric Kissell

Chapter 13

#29.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 43

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/7/17**

Party Information

Debtor(s):

Eric Kissell

Represented By
William J Howell

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:15-21412 Adrienne J Garcelli and Paul Garcelli

Chapter 13

#30.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 85

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/23/17**

Party Information

Debtor(s):

Adrienne J Garcelli

Represented By
Andy C Warshaw

Joint Debtor(s):

Paul Garcelli

Represented By
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-11302 Robert Allan Gloeckner and Lucia Ann Gloeckner

Chapter 13

#31.00 Trustee's Motion to Dismiss Case

EH__

Docket 40

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/26/17**

Party Information

Debtor(s):

Robert Allan Gloeckner

Represented By
Jenny L Doling

Joint Debtor(s):

Lucia Ann Gloeckner

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-13202 Horacio Valdez and Leticia Isabel Valdez

Chapter 13

#32.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 46

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/7/17**

Party Information

Debtor(s):

Horacio Valdez

Represented By
David Lozano

Joint Debtor(s):

Leticia Isabel Valdez

Represented By
David Lozano

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-14087 Donald L Maddox and Lisa A Maddox

Chapter 13

#33.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 58

Party Information

Debtor(s):

Donald L Maddox

Represented By
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Lisa A Maddox

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-14863 Samuel Garcia and Claudia Garcia

Chapter 13

#34.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 24

Party Information

Debtor(s):

Samuel Garcia

Represented By
James Geoffrey Beirne

Joint Debtor(s):

Claudia Garcia

Represented By
James Geoffrey Beirne

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-15216 Charles Bowen Blanton and Heddy Maria Blanton

Chapter 13

#35.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 40

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/1/17**

Party Information

Debtor(s):

Charles Bowen Blanton

Represented By
Michael E Clark

Joint Debtor(s):

Heddy Maria Blanton

Represented By
Michael E Clark

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-15614 Donald Lloyd Maki

Chapter 13

#36.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 54

*** VACATED *** REASON: CASE DISMISSED 9/21/17

Party Information

Debtor(s):

Donald Lloyd Maki

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-16235 Matthew Thomas Harper and Robin Jean Harper

Chapter 13

#37.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 42

Party Information

Debtor(s):

Matthew Thomas Harper

Represented By
Norma Duenas

Joint Debtor(s):

Robin Jean Harper

Represented By
Norma Duenas

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-18125 Marc Meisenheimer

Chapter 13

#38.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 31

Party Information

Debtor(s):

Marc Meisenheimer

Represented By
Lionel E Giron

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-18526 Ana M. Oliver

Chapter 13

#39.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 24

Party Information

Debtor(s):

Ana M. Oliver

Represented By
Michael Smith
Sundee M Teeple
Craig K Streed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-18546 Alexis I Barahona

Chapter 13

#40.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 32

Party Information

Debtor(s):

Alexis I Barahona

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-18990 John D Castro, Jr and Jennifer Manda Castro

Chapter 13

#41.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 34

Party Information

Debtor(s):

John D Castro Jr

Represented By
Chris A Mullen

Joint Debtor(s):

Jennifer Manda Castro

Represented By
Chris A Mullen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-19180 Barbara Rammell

Chapter 13

#42.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 31

***** VACATED *** REASON: CASE DISMISSED 9/21/17**

Party Information

Debtor(s):

Barbara Rammell

Represented By
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-19453 Gary Lynn Thompson and Rebecca Lynn Thompson

Chapter 13

#43.00 Trustee's Motion to Dismiss Case

EH__

Docket 24

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
8/22/17

Party Information

Debtor(s):

Gary Lynn Thompson

Represented By
Edward G Topolski

Joint Debtor(s):

Rebecca Lynn Thompson

Represented By
Edward G Topolski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar**

Monday, November 13, 2017

Hearing Room 301

12:30 PM

6:16-20044 Charles Mickey Alligood

Chapter 13

#44.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 35

Party Information

Debtor(s):

Charles Mickey Alligood

Represented By
Neil R Hedtke

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-20256 David J Darling

Chapter 13

#45.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 21

Party Information

Debtor(s):

David J Darling

Represented By
April E Roberts

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-20773 Idalia Temblador-Baisa

Chapter 13

#46.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 26

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/7/17**

Party Information

Debtor(s):

Idalia Temblador-Baisa

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 13, 2017

Hearing Room 303

12:30 PM

6:16-21232 Alejandro Salinas, Jr.

Chapter 13

#47.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17

EH__

Docket 41

Party Information

Debtor(s):

Alejandro Salinas Jr.

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

6:14-11369 Robert Wayne Cook, Sr. and Kelly Danielle Cook

Chapter 13

#1.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 4990 Padre Ave, Rancho Cucamonga, CA

MOVANT: WELLS FARGO BANK NA

From: 8/1/17, 9/12/17, 10/31/17

EH__

Docket 114

Tentative Ruling:

08/01/2017

Service: Proper

Opposition: Yes

Movant has established sufficient grounds to support relief from stay under § 362(d) (1) based on Debtor's failure to make required post-petition payments. Debtor alleges that more payments have been made to the Movant than the Motion accounts for and that some payments have been misapplied by the Movant, but provides no specificity or detail to support his assertions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Robert Wayne Cook Sr.

Represented By
Steven A Alpert

Joint Debtor(s):

Kelly Danielle Cook

Represented By
Steven A Alpert

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

CONT... Robert Wayne Cook, Sr. and Kelly Danielle Cook

Chapter 13

Movant(s):

Wells Fargo Bank, N.A .

Represented By

Dane W Exnowski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

6:15-10821 Duane C Lowrey and Joan M Lowrey

Chapter 13

#2.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1065 Mulberry Dr., Mohave Valley, Arizona 86440-9225

MOVANT: SETERUS, INC.

EH__

Docket 32

***** VACATED *** REASON: CONTINUED TO 11/28/17 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Duane C Lowrey

Represented By
W. Derek May

Joint Debtor(s):

Joan M Lowrey

Represented By
W. Derek May

Movant(s):

Federal National Mortgage

Represented By
Andrew David Goldberg
Renee M Parker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

6:15-21516 Richard John Arceneaux and Nina Marie Arceneaux

Chapter 13

#3.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 2810 Oak Creek Dr Unit D Ontario, CA 91761

MOVANT: BANK OF AMERICA NA

EH__

Docket 49

Tentative Ruling:

Tentative Ruling:

11/14/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C.
§ 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or
written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Richard John Arceneaux

Represented By
Gregory M Shanfeld

Joint Debtor(s):

Nina Marie Arceneaux

Represented By
Gregory M Shanfeld

Movant(s):

Bank of America, N.A.

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

CONT...

Richard John Arceneaux and Nina Marie Arceneaux

Chapter 13

Christina J O
Bonni S Mantovani
Asya Landa
Cassandra J Richey

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

6:16-19476 Sharon Burnom

Chapter 7

#4.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2010 Dodge Charger

MOVANT: GATEWAY ONE LENDING & FINANCE

EH__

Docket 39

Tentative Ruling:

Tentative Ruling:

11/14/17

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Sharon Burnom

Represented By
Christopher Hewitt

Movant(s):

Gateway One Lending & Finance

Represented By
Austin P Nagel

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

6:16-21213 Bartholemew James Ratner and Pamela J Armijo-Ratner

Chapter 13

#5.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11252 Dandelion Ln, Apple Valley, CA 92308

MOVANT: SETERUS, INC.

From: 10/24/17

EH__

Docket 45

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: Yes

Debtors had two bankruptcy cases dismissed in the year prior to filing the instant case. The first case was dismissed on July 25, 2016, for failure to make plan payments. The second case was dismissed on October 24, 2016, for failure to file information.

11 U.S.C. § 362(c)(4)(A)(ii) provides that if a debtor had two previous cases dismissed within a year of the instant case, then, absent court order, the automatic stay does not go into effect. Here, the Court did not impose the automatic stay, and, therefore, the automatic stay was never effective in this case. Therefore, the Court is inclined to GRANT the motion, confirming that the automatic stay is not in effect.

APPEARANCES REQUIRED.

Party Information

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

CONT... Bartholemew James Ratner and Pamela J Armijo-Ratner Chapter 13

Debtor(s):

Bartholemew James Ratner

Represented By
H Christopher Coburn

Joint Debtor(s):

Pamela J Armijo-Ratner

Represented By
H Christopher Coburn

Movant(s):

SETERUS, INC. as the authorized

Represented By
James F Lewin

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

6:17-11538 Michael Ray Sandoval

Chapter 13

#6.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 1244 North Euclid Ave, Ontario, CA 91762

MOVANT: WELLS FARGO BANK, N.A.

EH__

Docket 56

***** VACATED *** REASON: ORDER ENTERED 11/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Ray Sandoval

Represented By
Michael E Clark
Barry E Borowitz

Movant(s):

Wells Fargo Bank, N.A. as trustee

Represented By
Mark D Estle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

6:17-13649 Fernando Fabrigas, Sr. and Estela F. Fabrigas

Chapter 7

#7.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: Re: 221 Arden St Hemet, CA 92543

MOVANT: FREEDOM MORTGAGE CORPORATION

EH__

Docket 41

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fernando Fabrigas Sr.

Represented By
R Creig Greaves

Joint Debtor(s):

Estela F. Fabrigas

Represented By
R Creig Greaves

Movant(s):

FREEDOM MORTGAGE

Represented By
Jason C Kolbe

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Brandon J Iskander

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

6:17-15634 Tracy Marie Roche

Chapter 7

#8.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Ford Mustang

MOVANT: CALIFORNIA COAST CREDIT UNION

EH__

Docket 28

Tentative Ruling:

Tentative Ruling:

11/14/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY request under ¶ 3 for lack of cause shown. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Tracy Marie Roche

Represented By
Pamela KleinKauf

Movant(s):

California Coast Credit Union

Represented By
Lisa S Yun

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

CONT... Tracy Marie Roche

Chapter 7

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

6:17-15816 Integrated Wealth Management Inc

Chapter 7

#9.00 Motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: St Jude Heritage Medical Group v. Integrated Wealth Management et. al. docket case no. 8:17-cv-00647-JVS

MOVANT: ST JUDE HERITAGE MEDICAL GROUP

Also #9.1

EH__

Docket 66

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

Movant(s):

St. Jude Heritage Medical Group,

Represented By
Elaine Nguyen
Daniel J Weintraub
James R Selth

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

6:17-15816 Integrated Wealth Management Inc

Chapter 7

#9.10 CONT Status Conference RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual

From: 8/16/17, 8/23/17, 10/3/17, 10/31/17, Advanced From: 11/28/17

Also #9

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

6:17-15822 Alfredo Loera and Veronica O Loera

Chapter 13

#10.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3015 Pepper Tree Lane, San Bernardino, CA 92404

MOVANT: FREEDOM MORTGAGE CORPORATION

EH__

Docket 49

Tentative Ruling:

Tentative Ruling:

11/14/2017

Service is Proper
Opposition: Yes

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under ¶ 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Alfredo Loera

Represented By
Paul Y Lee

Joint Debtor(s):

Veronica O Loera

Represented By
Paul Y Lee

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

CONT... Alfredo Loera and Veronica O Loera

Chapter 13

Movant(s):

Freedom Mortgage Corporation

Represented By

Erin M McCartney

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

6:17-16255 Chad Priest Construction, Inc.,

Chapter 7

#11.00 CONT Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Douglas and Deanna Pearson v. Dan Catuna, etc. Docket no. CIVDS1620650 San Bernardino Superior Court Justice Center

MOVANT: DOUGLAS AND DEANNA PEARSON

From: 10/24/17

EH__

Docket 19

Tentative Ruling:

10/24/2017

Service is Improper
Opposition: None

The Court is inclined to DENY the motion. Movant did not serve the motion on the Chapter 7 Trustee, the United States Trustee, or the Debtor pursuant to Local Rule 4001-(1)(c)(1)(C). Furthermore, Movant's attorney's declaration requests annulment of the automatic stay to validate certain post-petition acts, however, there is no description of what acts were taken in violation of the automatic stay. Finally, the details of the state court action are unclear. Specifically, it is not clear what role Debtor has in the litigation, and, while Movant appears to wish to proceed against applicable insurance, the motion also seems to indicate that it is unclear whether there is any applicable insurance.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Chad Priest Construction, Inc.,

Represented By
Jonathan R Preston

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

CONT... Chad Priest Construction, Inc.,

Chapter 7

Movant(s):

Deanna Pearson

Represented By
Alan J Carnegie

Douglas Pearson

Represented By
Alan J Carnegie

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

6:17-18354 Joshua Anthony Beltran and Mabel Paz Beltran

Chapter 7

#13.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 1 Bobcat Model S70 Skid Steer Loader, Serial
No: B38V13681

MOVANT: PNC EQUIPMENT FINANCE LLC

EH__

Docket 11

Tentative Ruling:

Tentative Ruling:

11/14/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Joshua Anthony Beltran

Represented By
Neil R Hedtke

Joint Debtor(s):

Mabel Paz Beltran

Represented By
Neil R Hedtke

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

CONT... Joshua Anthony Beltran and Mabel Paz Beltran

Chapter 7

Movant(s):

PNC EQUIPMENT FINANCE,

Represented By
Raffi Khatchadourian

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

10:00 AM

6:17-14684 Timothy Wayne Lambert and Lisa Renee Lambert

Chapter 7

#13.10 HearingRE: [23] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 56753 Lisa Circle, Yucca Valley, CA 92284 .

Docket 23

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy Wayne Lambert

Represented By
Edgar P Lombera

Joint Debtor(s):

Lisa Renee Lambert

Represented By
Edgar P Lombera

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#14.00 CONT First Omnibus Objection of Debtor-In-Possession Allied Injury Management, Inc. Seeking Disallowance of Certain Proofs of Claim
(Holding Date)

From: 11/8/16, 12/6/16, 1/10/17, 3/7/17,4/4/17, 4/25/17, 6/27/17, 7/11/17,
9/12/17

EH__

Docket 83

***** VACATED *** REASON: CONTINUED TO 11/28/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn
Steven Werth

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01279 Allied Injury Management, Inc. v. One Stop Multi-Specialty Medical Group

#15.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01279. Complaint by Allied Injury Management, Inc. against One Stop Multi-Specialty Medical Group & Therapy, Inc., One Stop Multi-Specialty Medical Group, Inc., Nor Cal Pain Management Medical Group, Inc.. (Charge To Estate). Complaint for (1) Breach of Contract; (2) Account Stated; and (3) Unjust Enrichment Nature of Suit: (14 (Recovery of money/property - other))

From: 1/24/17, 3/7/17, 4/25/17, 6/27/17, 7/11/17, 9/12/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 11/28/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

One Stop Multi-Specialty Medical

Represented By
Maria K Pum
Maria C Armenta

One Stop Multi-Specialty Medical

Represented By
Maria K Pum
Maria C Armenta

Nor Cal Pain Management Medical

Represented By
Maria K Pum
Maria C Armenta

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

2:00 PM

CONT... Allied Injury Management, Inc.

Chapter 11

Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn
Steven Werth

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

2:00 PM

6:17-17137 Ricks Patio, Inc

Chapter 11

#16.00 Show Cause Hearing Re Sanctions

Also #17 - #19

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricks Patio, Inc

Represented By
Robert B Rosenstein

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

2:00 PM

6:17-17137 Ricks Patio, Inc

Chapter 11

#17.00 Application to Employ Shafer & MacRae, CPA as Bankruptcy Accountant

Also #16 - #19

EH__

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricks Patio, Inc

Represented By
Robert B Rosenstein

Movant(s):

Ricks Patio, Inc

Represented By
Robert B Rosenstein
Robert B Rosenstein
Robert B Rosenstein

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

2:00 PM

6:17-17137 Ricks Patio, Inc

Chapter 11

#18.00 CONT Emergency Motion for Approval of Stipulations Regarding Debtor's Use of Cash Collateral

From: 10/5/17

Also #16 - #19

EH__

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricks Patio, Inc

Represented By
Robert B Rosenstein

Movant(s):

Ricks Patio, Inc

Represented By
Robert B Rosenstein
Robert B Rosenstein
Robert B Rosenstein

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 14, 2017

Hearing Room 303

2:00 PM

6:17-17137 Ricks Patio, Inc

Chapter 11

#19.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 9/26/17

Also #16 - #18

EH__

Docket 8

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricks Patio, Inc

Represented By
Robert B Rosenstein

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 15, 2017

Hearing Room 303

11:00 AM

6:16-16582 Pedro M Flores and Sandra Flores

Chapter 7

#1.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 39

Tentative Ruling:

11/15/2017

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the following administrative claims will be allowed:

Trustee Fees: \$ 1,006.29
Trustee Expenses: \$ 143.24

The application for compensation is approved and the trustee may submit on the tentative.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Pedro M Flores Pro Se

Joint Debtor(s):

Sandra Flores Pro Se

Trustee(s):

Charles W Daff (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 15, 2017

Hearing Room 303

11:00 AM

6:16-18223 Delia Victoria Ruiz

Chapter 7

#2.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 31

Tentative Ruling:

11/15/2017

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the following administrative claims will be allowed:

Trustee Fees: \$ 937.54
Trustee Expenses: \$ 66.17

The application for compensation is approved and the trustee may submit on the tentative.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Delia Victoria Ruiz

Represented By
Frank Amador

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 15, 2017

Hearing Room 303

11:00 AM

6:17-13853 Malik Muhammad Asif and Zobia Asif

Chapter 7

#3.00 Application for Compensation for Todd L Turoci, Debtor's Attorney, Period: 5/8/2017 to 6/23/2017, Fee: \$18130.00, Expenses: \$538.65.

EH__

Docket 120

Tentative Ruling:

11/15/17

Amounts Requested:

Fees: \$18,130

Costs: \$538.65

Service of the Application was Proper. The US Trustee filed objection to the Application on 10/31/17. In particular, the US Trustee argues that Applicant's fees should be reduced by 50% where the mismanagement of the case from its inception undercuts any benefit conferred by Applicant's services.

In support of the UST's Objection, the Court takes judicial notice of the record of the June 20, 2017, hearing at which the Debtors' motions regarding cash collateral were denied. At that same hearing, the Court, primarily on the objections to the use of cash collateral, found that the conduct of the Debtors in using cash collateral without authorization as well as the overall record of the problems with the Debtors' gross management of the franchises warranted sua sponte conversion of the case. Applicant conceded at the hearing that the case was filed quickly and without a full understanding of the financial situation of the Debtors.

Further, Applicant for its part has opted not to respond to the UST's objection. Based on the foregoing, the Court tentatively finds that the 50% reduction in fees is appropriate.

APPEARANCES REQUIRED.

Party Information

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Riverside
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11:00 AM

CONT... Malik Muhammad Asif and Zobia Asif

Chapter 7

Debtor(s):

Malik Muhammad Asif

Represented By
Todd L Turoci

Joint Debtor(s):

Zobia Asif

Represented By
Todd L Turoci

Movant(s):

Malik Muhammad Asif

Represented By
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci

Zobia Asif

Represented By
Todd L Turoci
Todd L Turoci
Todd L Turoci
Todd L Turoci

Trustee(s):

Arturo Cisneros (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, November 15, 2017

Hearing Room 303

2:00 PM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat Chapter 7
Adv#: 6:15-01307 Cisneros v. OIC MEDICAL CORPORATION, a California corporation

#4.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01307. Complaint by A. Cisneros against OIC MEDICAL CORPORATION, a California corporation, LIBERTY ORTHOPEDIC CORPORATION, a California corporation, UNIVERSAL ORTHOPAEDIC GROUP, a California corporation. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers (with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 2/24/16, 4/13/16, 6/22/16, 8/24/16, 11/2/16, 2/1/17, 3/8/17, 7/12/17, 9/13/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 2/14/18 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

OIC MEDICAL CORPORATION, a

Represented By
Summer M Shaw
George Hanover

LIBERTY ORTHOPEDIC

Represented By
Summer M Shaw

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CONT... Douglas J Roger, MD, Inc., A Professional Corporat
George Hanover

Chapter 7

UNIVERSAL ORTHOPAEDIC

Represented By
Summer M Shaw
George Hanover

Plaintiff(s):

A. Cisneros

Represented By
D Edward Hays
Chad V Haes

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
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2:00 PM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat Chapter 7
Adv#: 6:15-01309 Cisneros v. DOUGLAS J. ROGER, M.D., INC. DEFINED BENEFIT PLAN

#5.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01309. Complaint by A. Cisneros against DOUGLAS J. ROGER, M.D., INC. DEFINED BENEFIT PLAN. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential Transfer (with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other))

From: 12/30/15, 2/24/16, 4/13/16, 6/22/16, 8/24/16, 11/2/16, 2/1/17, 3/8/17, 7/12/17, 9/13/17

EH__

Docket 1

*** VACATED *** REASON: CONTINUED TO 2/14/18 AT 2:00 PM

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

DOUGLAS J. ROGER, M.D., INC.

Represented By
Summer M Shaw

Plaintiff(s):

A. Cisneros

Represented By
D Edward Hays
Chad V Haes

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CONT... Douglas J Roger, MD, Inc., A Professional Corporat

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Trustee(s):

Arturo Cisneros (TR)

Represented By

Chad V Haes

D Edward Hays

Franklin R Fraley Jr

**United States Bankruptcy Court
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2:00 PM

6:15-14230 Home Security Stores, Inc.

Chapter 7

Adv#: 6:17-01085 PRINGLE v. Winn et al

#6.00 Motion to Quash or in the Alternative to Modify Subpoena served upon Accent Computer Solutions Inc

EH__

Docket 23

Tentative Ruling:

11/15/17

BACKGROUND

On April 28, 2015, Home Security Stores, Inc. ("Debtor") filed its petition for chapter 7 relief. Ralph and Stacy Winn (the "Winns") are the sole shareholders and officers of the Debtor company. Prepetition, the Debtor also employed the Winns' daughter and their nephew, Stephen Knoch. John P. Pringle is the duly appointed chapter 7 trustee ("Trustee").

On April 28, 2017, the Trustee filed a Complaint for avoidance of transfers, for breach of fiduciary duty for declaratory relief as to ownership of certain property, for violations of the automatic stay, for trademark infringement, and for disallowance of claims (the "Complaint"). The Complaint names the Winns, certain of their relatives, and Sterling Security Products, Inc., as defendants.

On October 19, 2017, the Winns filed a motion to quash (the "Motion"), or, in the alternative, to modify subpoena served upon Accent Computer Solutions, Inc. ("ACS"). ACS is a company the Debtor paid for off-site data storage and backup of the Debtor's servers, prepetition. The Motion generally asserts that the Trustee has subpoenaed documents from ACS which are protected by the attorney-client privilege. On this basis, the Winns request that the Court quash the subpoena, or in the alternative, that it modify the subpoena to direct ACS to produce any correspondence related to Mr. Winn his counsel to review and redact and/or withhold as necessary

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CONT... **Home Security Stores, Inc.**

Chapter 7

(subject to the Winns' counsel providing a detailed privilege log setting forth the specific basis for any redaction or withholding of a particular document).

On November 1, 2017, the Trustee filed his opposition to the Motion and evidentiary objections to the declaration of Ralph Winn (the "Opposition"). On November 8, 2017, the Winns filed their reply ("Reply").

DISCUSSION

As a threshold matter, the Court notes that the Motion to Quash fails to adequately provide the Court with facts supportive of the Motion. Additionally, the Motion is itself inadequate in terms of stating the applicable law.

In the absence of authority to the contrary, it appears that the federal common law of attorney-client privilege applies. In an action based on federal law, the federal common law of attorney-client privilege applies. See FED.R.EVID. 501; *Admiral Insurance Co. v. United States District Court*, 881 F.2d 1486, 1492 (9th Cir.1989). In particular, the allegations of the Complaint specifically set forth several allegations regarding postpetition conduct of the defendants. Thus, the action appears to be based in federal law. *In re Mortg. & Realty Tr.*, 212 B.R. 649, 652 (Bankr. C.D. Cal. 1997).

Under Ninth Circuit law, the attorney-client privilege under Rule 501 of the Federal Rules of Evidence applies if the following conditions are met:

- (1) legal advice of any kind is sought
- (2) from a professional legal adviser in his capacity as such,
- (3) the communications relating to that purpose,
- (4) made in confidence
- (5) by the client,

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CONT...

Home Security Stores, Inc.

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- (6) are at this instance permanently protected
- (7) from disclosure by himself or by the legal adviser,
- (8) unless the protection has been waived.

Admiral Insurance, 881 F.2d at 1492. The claimant of the attorney-client privilege must carry the burden of establishing the applicability of the privilege. *United States v. Osborn*, 561 F.2d 1334, 1339 (9th Cir.1977).

The attorney-client privilege is waived when the communication between the attorney and client is made in the presence of a third party. *United States v. Landof*, 591 F.2d 36 (9th Cir.1978) (holding that the attorney-client privilege was waived as to a conversation, where an attorney for a third party attended the meeting). Similarly, the voluntary delivery of a privileged communication by a holder of the privilege to someone not a party to the privilege waives the privilege. *United States v. Zolin*, 809 F.2d 1411, 1415 (9th Cir.1987) (holding that the contents of certain tapes were privileged because the non-party present at the time the tapes were recorded had a common interest with the party involved in litigation), *aff'd* in relevant part, 491 U.S. 554, 109 S.Ct. 2619, 105 L.Ed.2d 469 (1989).

In support of the Motion, the only first-hand evidence to establish the applicability of the privilege is a declaration of Ralph Winn. In his declaration, Mr. Winn states generally that there is a "strong possibility" that he sent and/or received emails on his desktop computer at the Debtor from Harry Histen and William Simon, both attorneys representing him. (Winn Decl. ¶4). He further states that as a result of his telephone conversations with Mr. Knoch, and on information and belief, there is a substantial possibility that the emails sent to and/or received from Harry Histen and William Simon are stored by ACS and will be produced by ACS pursuant to the Trustee's subpoena. In Opposition, the Trustee has provided evidence that the Winns identified both Histen and Simon as attorneys for the Debtor.

As to whether Mr. Winn has provided sufficient evidence to establish that he was the "client" when sending communications to the named attorneys through his desktop computer at the offices of the Debtor, *US v. Graf* is instructive. 610 F.3d

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CONT... **Home Security Stores, Inc.**

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1148, 1155 (9th Cir. 2010). In *Graf*, the Ninth Circuit specifically evaluated a trial court's finding regarding the fifth element of the eight-part test – the identity of the client in a corporate context:

"The administration of the attorney-client privilege in the case of corporations ... presents special problems. As an inanimate entity, a corporation must act through agents. A corporation cannot speak directly to its lawyers." *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 348, 105 S.Ct. 1986, 85 L.Ed.2d 372 (1985); accord *Admiral Ins. Co. v. U.S. Dist. Court*, 881 F.2d 1486, 1492 (9th Cir.1989) ("As fictitious entities, corporations can seek and receive legal advice and communicate with counsel only through individuals empowered to act on behalf of the corporation."). One of these special problems is that corporate officers, directors, and employees who communicate with corporate counsel on behalf of the corporation may later attempt to claim a personal attorney-client privilege regarding those communications after the corporation has waived its own privilege.

Id. at 1155. In *Graf*, the trial court determined that the principal of a corporation did not have a reasonable subjective belief, communicated to the named attorneys, that he was represented by the attorneys in his individual capacity. The Ninth Circuit in *Graf*, indicated that the appropriate test to determine whether a corporate employee sought personal legal advice from the corporate attorneys is the "*Bevill* test," which it has adopted in situations such as the assertion of attorney-client privilege asserted by the *Winns*. *Id.* citing *Matter of Bevill, Bresler & Schulman Asset Mgmt. Corp.*, 805 F.2d 120 (3d Cir. 1986). Under the *Bevill* test, individual corporate officers or employees seeking to assert a personal claim of attorney-client privilege must affirmatively show five factors:

1. They must show they approached counsel for the purpose of seeking legal advice.
2. They must demonstrate that when they approached counsel they made it clear that they were seeking legal advice in their individual rather than in their representative capacities.
3. They must demonstrate that the counsel saw fit to communicate with them in their individual capacities, knowing that a possible conflict

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Home Security Stores, Inc.
could arise.

Chapter 7

4. They must prove that their conversations with counsel were confidential.

5. And they must show that the substance of their conversations with counsel did not concern matters within the company or the general affairs of the company.

Bevill at 123, 125 (internal citations omitted).

Here, there is no dispute that the Winns as sole shareholders and officers of the Debtor also acted as its agents in their communications with third parties. The declaration of Mr. Winn broadly describes all of his communications with Messrs Histen and Simon as establishing the privilege. However, Mr. Winn's statements are overbroad and do not specify the type of legal advice being sought nor are his statements supported by declarations of the professionals to corroborate his claims that the communications between himself and Messrs Histen and Simon were related to personal representation as opposed to communications regarding the Debtor or general affairs of the Debtor (for which the Trustee now holds the privilege).

Finally, although the Court need not reach the issue of whether the Winns waived any privilege by using the Debtor's computers, the Court is inclined to agree with the authorities cited by the Winns which indicate that absent an internal policy by the Debtor indicating that the company could disclose the email communications of its employees, use of the Debtor's equipment to communicate with the attorneys does not of itself establish a waiver of the attorney-client privilege.

TENTATIVE RULING

The Court's tentative ruling is that under the *Bevill* test, the Winns have not established that a personal attorney-client privilege exists over any of Mr. Winn's communications with the above attorneys and the Motion should be DENIED on that basis.

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CONT... Home Security Stores, Inc.

Chapter 7

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Home Security Stores, Inc.

Represented By
Winfield S Payne III

Defendant(s):

Ralph Winn

Represented By
Douglas A Plazak

Sterling Security Service, Inc.

Represented By
Seth W Wiener

Natalia V Knoch

Represented By
Seth W Wiener

Steven B Knoch

Represented By
Seth W Wiener

Stacy Winn

Represented By
Douglas A Plazak

Movant(s):

Ralph Winn

Represented By
Douglas A Plazak

Stacy Winn

Represented By
Douglas A Plazak

Plaintiff(s):

JOHN P PRINGLE

Represented By
Charity J Miller
Robert P Goe

Trustee(s):

John P Pringle (TR)

Represented By

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Home Security Stores, Inc.

Robert P Goe
Charity J Miller

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6:17-13853 Malik Muhammad Asif

Chapter 7

Adv#: 6:17-01197 Itria Ventures, LLC v. Asif et al

#7.00 Status Conference RE: [1] Adversary case 6:17-ap-01197. Complaint by Itria Ventures, LLC against Malik Muhammad Asif, Zobia Asif. false pretenses, false representation, actual fraud))

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 12/6/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Malik Muhammad Asif

Represented By
Todd L Turoci

Defendant(s):

Malik Muhammad Asif

Pro Se

Zobia Asif

Pro Se

Joint Debtor(s):

Zobia Asif

Represented By
Todd L Turoci

Plaintiff(s):

Itria Ventures, LLC

Represented By
Michael F Chekian

Trustee(s):

Arturo Cisneros (TR)

Represented By
Thomas H Casey

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2:00 PM

6:17-14228 Michelle Meredith

Chapter 7

Adv#: 6:17-01196 Grobstein, Chapter 7 Trustee v. Polacek, as Trustee of the Margaret J. Heath

#8.00 Status Conference RE: [3] Amended Complaint First Amended Complaint for: (1) Declaratory Relief; (2) Accounting; and (3) Turnover of Property of the Estate by Noreen A Madoyan on behalf of Howard B Grobstein, Chapter 7 Trustee against Sharon Polacek, as Trustee of the Margaret J. Heath Revocable Living Trust, 2002, Amended July 1, 2016, or any successor Trustee. (RE: related document(s)1 Adversary case 6:17-ap-01196. Complaint by Howard B Grobstein, Chapter 7 Trustee against Sharon Polacek, as Trustee of the Margaret J. Heath Revocable Living Trust, 2002, Amended July 1, 2016, or any successor Trustee. (Charge To Estate \$350.00). Complaint for: (1) Declaratory Relief; (2) Accounting; and (3) Turnover of Property of the Estate (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)) (Madoyan, Noreen) Modified on 9/15/2017. filed by Plaintiff Howard B Grobstein, Chapter 7 Trustee). (Madoyan, Noreen)

EH__

Docket 3

*** VACATED *** REASON: CONTINUED TO 2/14/18 AT 2:00 P.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michelle Meredith

Represented By
Summer M Shaw

Defendant(s):

Sharyn Polacek, as Trustee of the

Pro Se

Plaintiff(s):

Howard B Grobstein, Chapter 7

Represented By
Noreen A Madoyan

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CONT... Michelle Meredith

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Trustee(s):

Howard B Grobstein (TR)

Represented By
Noreen A Madoyan

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6:16-13644 Yolanda Yvette Tyes

Chapter 7

Adv#: 6:16-01200 Chicago Title Insurance Company v. Tyes

#9.00 CONT Plaintiff Chicago Title Insurance Company's Motion for Summary Judgment

From: 11/1/17

Also #10

EH__

Docket 50

Tentative Ruling:

11/15/17

BACKGROUND

On April 25, 2016, Yolanda Yvette Tyes ("Debtor" or "Defendant") filed her petition for chapter 7 relief. Among the creditors of the Debtor's estate is Chicago Title Insurance Company ("Plaintiff"), the holder of a default judgment obtained against the Debtor, prepetition. On August 1, 2016, Plaintiff filed its complaint for determination of nondischargeability of debt against the Debtor under § 523(a)(2) (the "Complaint").

On October 16, 2009, prepetition, Plaintiff filed a complaint against the Debtor in the Superior Court of California ("State Court Action"). Subsequently, upon Debtor's default and Plaintiff's prove-up, the State Court entered a default judgment in favor of the Plaintiff and against the Debtor on January 25, 2010 (the "Judgment"). Plaintiff initially sought relief in this Court by motion for default judgment and collateral estoppel. However, the Court granted the Debtor's request to set aside the entry of default prior to ruling on the Plaintiff's default judgment motion. Debtor filed her answer to the Complaint on November 16, 2016. The Debtor has at all times throughout the course of the instant litigation represented herself in pro per.

On September 11, 2017, the Plaintiff filed a Motion for Summary Judgment ("the Motion"). The Debtor, though properly served, has failed to file response or

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CONT... Yolanda Yvette Tyes
opposition to the Motion.

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DISCUSSION

A. Summary Judgment

Summary judgment should be granted 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. Fed. R. Civ. P. 56(c) (made applicable to adversary proceedings by Fed. R. Bankr. P. 7056).

The moving party has the burden of establishing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must go beyond the pleadings and identify facts that show a genuine issue for trial. *Id.* at 324. The court must view the evidence in the light most favorable to the nonmoving party. *Bell v. Cameron Meadows Land Co.*, 669 F.2d 1278, 1284 (9th Cir. 1982). All reasonable doubt as to the existence of a genuine issue of fact should be resolved against the moving party. *Hector v. Wiens*, 533 F.2d 429, 432 (9th Cir. 1976). The inference drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Valadingham v. Bojorquez*, 866 F.2d 1135, 1137 (9th Cir. 1989). Where different ultimate inferences may be drawn, summary judgment is inappropriate. *Sankovich v. Insurance Co. of N. Am.*, 638 F.2d 136, 140 (9th Cir. 1981).

If the moving party meets its initial burden, the non-moving party must set forth, by affidavit or as otherwise provided in Rule 56, specific facts showing that there is a genuine issue for trial. *Id.* However, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material fact...." *Matsushita Electrical Industry Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-587 (1986).

A fact is material if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

B. Fraud and/or misrepresentation pursuant to § 523(a)(2)

The primary thrust of Plaintiff's Complaint is that the Debtor in 2006,

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fraudulently obtained two loans in her name and her then-husband's name from Washington Mutual Bank (for \$360,000 and \$90,000), by among other things, forging her husband's name on the loan documents, and then keeping all of the refinancing proceedings, to refinance her then property located at 428 Daisy Avenue, Unit #2, in Long Beach, CA ("Subject Property"). After paying the prior liens on the Property, the Debtor received the difference between the amount of the new loans and the payoff of the prior loans. The result is that the Debtor received a windfall of approximately \$118,500 to the detriment of her ex-husband who then recovered the \$118,500 from the Plaintiff. This action was commenced by the Plaintiff to recover those funds from the Debtor.

Section 523(a)(2)(A) provides in relevant part that a discharge under section 727 does not discharge an individual debtor from any debt for obtaining money, property, services, or an extension, renewal, or refinance of credit by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition. 11 U.S.C. § 523(a)(2)(A). In order to maintain a claim for actual fraud, the plaintiff must provide sufficient factual content from which a court can derive that:

- (1) the debtor made the representations; (2) that at the time he knew they were false; (3) that he made them with the intention and purpose of deceiving the creditor; (4) that the creditor relied on such representations, and (5) that the creditor sustained the alleged loss and damage as the proximate result of the representations having been made.

In re Taylor, 514 F.2d 1370, 1373 (9th Cir.1975).

The evidence filed in connection with the Motion, and in particular the deposition excerpts of Victor Johnson, Janine Soule-Washington, and the Debtor support the following findings of fact:

1. The refinance loans paid off the then existing loans on the Subject Property and the surplus amounts served as a cash-out that was deposited into escrow for the benefit of the borrowers;
2. Plaintiff issued a lender's title insurance policy to Washington Mutual Bank in connection with both refinance loans consummated on August 31, 2006;

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CONT...

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3. Co-borrower Victor Johnson's signatures were forged on all the Washington Mutual Bank refinance loan documents, and that the named notary public whose notary stamp was on the documents, Ms. Janine K. Soule-Washington, was not in fact present when the documents were allegedly signed by Victor Johnson;
4. The Deed of Trust dated August 31, 2006, securing a loan for \$360,000.00 with Washington Mutual Bank against the Subject Property, contained Defendant's genuine signature and initials;
5. Plaintiff issued payment to Victor Johnson in the amount of \$118,500.00 in order to settle any claims he had against lender Washington Mutual Bank, which represents the approximate difference between the amount of the then existing loans on the Subject Property and the two August 31, 2006 Washington Mutual Bank refinance loans;
6. Defendant was aware at all times that the documents signed in connection with seeking the refinance funds contained forged initials and signatures of Victor Johnson;
7. The Deed of Trust and related dated August 31, 2006 securing a loan of \$90,000.00 with Washington Mutual Bank against the Subject Property, and related refinance documents, contained Victor Johnson's forged signature and initials;
8. The Deed of Trust dated August 31, 2006, securing a loan for \$90,000.00 with Washington Mutual Bank against the Subject Property, and related refinance documents, contained Defendant's genuine signature and initials;
9. Neither Defendant nor Victor Johnson personally appeared before notary public Janine Soule-Washington when either the Deed of Trust dated August 31, 2006 securing a loan of \$360,000.00 against the Subject Property, or the Deed of Trust dated August 31, 2006, securing a loan for \$90,000.00 with Washington Mutual Bank against the Subject Property were executed and notarized;
10. Defendant participated in the effort to have the initials and signatures of Victor Johnson forged in order to obtain the refinance of the Subject Property;
11. Defendant received funds after the two August 31, 2006 Washington Mutual Bank loan refinance transactions closed;
12. The document containing instructions to wire the proceeds from the two August 31, 2006 Washington Mutual Bank loan refinance transactions contained Defendant's genuine signature;

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CONT...

Yolanda Yvette Tyes

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13. Victor Johnson did not receive any portion of the proceeds from the two August 31, 2006 Washington Mutual Bank loan refinance transactions, and thus Defendant kept all the cash-out proceeds for herself;
14. Victor Johnson informed Defendant prior to her submitting and signing the refinance documents that he would not agree to the second refinance of the Subject Property and demanded instead that Defendant sell the Subject Property;
15. Victor Johnson had no contact with Defendant between May 2006 and approximately September 2006, when the two August 31, 2006 Washington Mutual Bank loan refinance transactions involving the Subject Property were consummated;
16. Defendant admitted she had never discussed the two August 31, 2006 Washington Mutual Bank loan refinance transactions with Victor Johnson before they closed;
17. Victor Johnson did not authorize either of the two August 31, 2006 Washington Mutual Bank loan refinance transactions wherein Defendant and himself were the named borrowers;
18. Defendant admitted to Victor Johnson that she was involved in the two August 31, 2006 Washington Mutual Bank loan refinance transactions;
19. Notary public Janine Soule-Washington has never personally notarized any documents for either Defendant or Victor Johnson;
20. Notary public Janine Soule-Washington let Alvin Colbert borrow her notary journal for purposes of notarizing the August 31, 2006 loan documents, and she was not present when the August 31, 2006 loan documents were executed and notarized;
21. Alvin Colbert was Defendant's ex-boyfriend going back to the 1980's and with whom Defendant had two children prior to meeting Victor Johnson;
22. Defendant likely forged Victor Johnson's signature in the two August 31, 2006 Washington Mutual Bank loan refinance transactions because Victor Johnson had good credit;
23. Fingerprint analysis conducted by the Long Beach Police Department Latent Prints Office in or around June 2007 revealed that the fingerprint impressions next to Defendant's name in Janine Soule-Washington's notary journal matched with Defendant's fingerprint impressions;
24. Fingerprint analysis conducted by the Long Beach Police Department Latent Prints Office in or around June 2007 revealed that the fingerprint impressions

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- next to Victor Johnson's name in Janine Soule-Washington's notary journal did not match Victor Johnson's fingerprint impressions. Based thereon, the Long Beach Police Department concluded that "it appears Johnson was not the person who was present during the signing of the loan documents";
25. On January 25, 2010, Judge Geoffrey T. Glass of the California Superior Court, County of Orange, entered a Judgment in favor of Plaintiff and against Debtor in the 2009 State Court Action in the amount of \$118,500;
 26. The allegations of the State Court Action are incorporated into Plaintiff's Complaint for nondischargeability and are supported by the evidence filed in connection with the instant Motion.

Based on the above findings of fact, the Court concludes that (1) the Debtor made false representations to Plaintiff and the associated lending institutions when she knowingly submitted refinance paperwork containing forgeries of her ex-husband Victor Johnson; (2) that at the time the loan documents were submitted, the Debtor knew that her ex-husband's signature and consent to the refinance had been falsified; (3) that the Debtor worked in concert with her ex-boyfriend, Alvin Colbert, to forge Victor Johnson's signature and employed the notary journal of Alvin Colbert's then girlfriend, Janine Soule Washington with the intent and purpose of deceiving the Plaintiff and associated lending institutions; (4) that the Plaintiff and associated lending institutions relied on such representations, assuming them to be true and accurate, when they approved the loans and when Plaintiff extended its title insurance in connection with the transactions, and (5) that the Plaintiff sustained the loss and damage in the amount of \$118,500 as the proximate result of the Debtor's false representations and forgeries having been made.

TENTATIVE RULING

The Court finds that the pleadings, depositions, failure to answer interrogatories, and additional evidence filed in connection with the Motion show that there is no genuine issue as to any material fact and that the Plaintiff is entitled to a judgment as a matter of law. On this basis, the Court GRANTS Summary Judgment in favor of the Plaintiff on the § 523(a)(2)(A) claim in the amount of \$118,500.

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Note: Although the Motion makes reference to § 523(a)(6), relief under this provision of the code has not been sought in the Plaintiff's Complaint. As such, any request for relief under § 523(a)(6) is DENIED without prejudice.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Yolanda Yvette Tyes	Pro Se
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Defendant(s):

Yolanda Yvette Tyes	Pro Se
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Movant(s):

Chicago Title Insurance Company	Represented By Charles C H Wu Thanh-Thuy T Luong Vikram M Reddy
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Plaintiff(s):

Chicago Title Insurance Company	Represented By Charles C H Wu Thanh-Thuy T Luong Vikram M Reddy
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Trustee(s):

Larry D Simons (TR)	Pro Se
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Adv#: 6:16-01200 Chicago Title Insurance Company v. Tyes

#10.00 CONT Status Conference Re: Complaint by Chicago Title Insurance Company against Yolanda Yvette Tyes. (d),(e), 62 - Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud

From: 10/19/16, 11/9/16, 1/11/17, 6/21/17, 10/25/17, 11/1/17

Also #9

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Yolanda Yvette Tyes Pro Se

Defendant(s):

Yolanda Yvette Tyes Pro Se

Plaintiff(s):

Chicago Title Insurance Company Represented By
Charles C H Wu
Thanh-Thuy T Luong
Vikram M Reddy

Trustee(s):

Larry D Simons (TR) Pro Se

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6:11-12917 Brad Stoddard and Deborah Ann Stoddard

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#11.00 CONT Motion For Order To Show Cause Why Creditor American Educational Services and Educational Credit Management Corporation Should Not Be Held in Contempt of Court, and For Damages and Attorney's Fees, for Intentionally Violating The Discharge Injunction

From: 7/27/17, 10/2/17, 10/18/17

Also #11.1

EH__

Docket 96

Tentative Ruling:

10/18/17

I. BACKGROUND

On January 28, 2011, Brad & Deborah Stoddard ("Debtors") filed a Chapter 13 voluntary petition and plan. Debtors' plan contained a provision, in section V.F, that stated: "The debt of American Education Services will be discharged; the school has been stripped of accreditation and is on probation." The plan was served on American Education Services at P.O. Box 2461, Harrisburg, PA 17105-2461.

On March 14, 2011, "Brazos/US Bank Natnl" filed a proof of claim ("Claim 5") for an unsecured claim in the amount of \$35,080.90 on the basis of a student loan. The proof of claim indicating that notices should be sent to "AES/PHEAA, PO Box 8181, Harrisburg, PA 17105." On March 17, 2011, the Court summarily confirmed Debtors' plan on the basis of the trustee's recommendation. On March 30, 2011, AES/PHEAA filed a transfer of claim agreement, stating that Claim 5 was being transferred to AEA/PHEAA, and that notices should be sent to "AES/PHEAA, PO Box 8147,

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Harrisburg, PA 17105." On May 24, 2011, the Court entered an order confirming Debtors' plan.

On December 5, 2016, Debtors received a discharge. On June 1, 2017, Debtors filed a motion for an order to show cause why American Educational Services ("AES") should not be held in contempt for violating the discharge injunction. On June 8, 2017, AES filed its opposition. Debtors allege that the AES violated the discharge injunction through various attempts to collect on Claim 5 after Debtors received a discharge. AES asserts that they did not violate the discharge injunction because: (1) AES was not a creditor at the time Debtor filed their plan; (2) the provision at issue in Debtors' plan was unclear; and (3) Debtors' failure to utilize the appropriate procedure precludes the relief sought.

After a hearing on July 27, 2017, the Court issued an order to show cause why Debtors and their former counsel, Matthew Resnik ("Resnik"), should not be sanctioned for including a prohibited provision in a Chapter 13 plan (the "OSC"). On August 14, 2017, Debtors filed their opposition. On August 17, 2017, Resnik filed his opposition. On August 24, 2017, AES filed a reply. After a hearing on August 31, 2017, the Court continued the matter to October 2, 2017. On September 21 & 22, 2017, Resnik supplemented his response.

II. DISCUSSION

A person who knowingly violates the discharge injunction can be held in contempt under § 105(a) of the Bankruptcy Code. *See In re Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002). The moving party has the burden of showing by clear and convincing evidence that the contemnors knowingly and willfully violated a specific and definite order of the court. *Id.* In addition, the moving party must prove that the creditor: (1) knew the discharge injunction was applicable; and (2) intended the actions which violated the injunction in order to justify sanctions. *Id.*

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Here, the critical issue is whether Debtors' plan effectively resulted in a discharge of the debt upon which AES subsequently attempted to collect. There are three distinct issues that warrant attention in connection with the above issue: (1) whether Debtors' plan was sufficiently clear regarding the debt to be discharged; (2) whether holding that Claim 5 was discharged would violate principles of due process; and (3) whether, and to what extent, it would be appropriate for the Court to exercise its equitable remedies.

I. The Plan Provision

The plan provision at issue states: "The debt of American Education Services will be discharged; the school has been stripped of accreditation and is on probation." It is crucial that a miscellaneous provision included within a Chapter 13 plan both identify the creditor and claim to be affected by the plan, and explain the proposed treatment of the debtor's claim. Here, it is not clear that the above provision was adequate in either respect.

First, at the time of the petition date, at the time of the filing of the plan containing the above provision, and at the time of the confirmation hearing, AES was not the holder of Claim 5, but was merely the servicer of Claim 5. While AES subsequently acquired the claim, after the confirmation hearing but before the confirmation order was entered, that subsequent acquisition does not change the fact that AES was not a creditor of Debtors at the time of confirmation, or at the time that service of the plan was made. Although AES did acquire a claim against Debtor between the confirmation hearing and the entry of the confirmation order, such acquisition occurred too late for AES to have an opportunity to timely object to the subject plan provision.

Nor does the fact that Claim 5 identified AES as the party to be noticed affect who was the actual creditor of Debtors. While that identification affects the propriety of the notice given, it does not affect the characterization of AES as a loan servicer, rather

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than a creditor. A loan servicer is not a proper defendant in a non-dischargeability adversary proceeding, *see In re Kleckner*, 560 B.R. 172, 177 (Bankr. E.D. Pa. 2016), and, likewise, it is not the proper party in a "discharge by declaration."

Furthermore, the contractual interpretation canon that ambiguous language is to be construed against the drafter is appropriate in this circumstance. *See generally Maryland Cas. Co. v. Knight*, 96 F.3d 1284, 1291 (9th Cir. 1996) (identifying canon). The actual holder of the claim, "Brazos/US Bank Natnl," had no reason to object to the proposed plan, because they were not identified in the plan. Even if "Brazos/US Bank Natnl" were aware that AES was the loan servicer, AES services many loans, and it is entirely possible, indeed probably common, that AES services multiple loans for many individuals. *See, e.g., In re Kleckner*, 560 B.R. 172, 173 n.1 (Bankr. E.D. Pa. 2016) (AES was servicer for loans held by six different entities). Furthermore, "Brazos/US Bank Natnl" was not served with the plan or noticed of the confirmation hearing, and, therefore, was denied due process. AES meanwhile was not a creditor at the time the plan was served, and would have had no reason to object to plan confirmation; indeed, it is not even clear that AES was a party in interest with standing to object.

Finally, the subject plan provision is unclear regarding the proposed treatment of the "claim." While the plan provision indicates that the claim "will be discharged" it does not indicate any timeframe or conditions for discharge.

While at first glance it may seem that the phrase means the claim is to be discharged upon plan completion, the situation is not so simple. What would have been the effect if Debtors had stated that the claim was to be discharged immediately upon plan confirmation? While such a premature discharge violates the Code, a discharge of a student loan debt at plan completion, without an adversary proceeding and an "undue hardship" determination, also violates the Code. But by using the word "will," a future tense verb, Debtors appear to have intended that the claim would be discharged at some future time, after some further event. Is that future event the completion of plan payments? Or is that event the successful prosecution of an adversary proceeding? Given such ambiguity, in construing such ambiguous language against the draft, the Court determines that it is appropriate to adopt the most legally appropriate interpretation, that discharge here is subject to an unperformed condition precedent (i.e. the filing of a non-dischargeability complaint), and the condition has not been

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satisfied, as a complaint has not been filed..

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In accordance with the above, the Court finds that the subject plan provision, in the absence of a subsequent adversary proceeding, was inadequate to discharge Claim 5.

II. Notice & Due Process

As is noted in section I, *supra*, there are three different PO boxes in Harrisburg, Pennsylvania that are relevant here: (1) PO Box 8181, the address located on Claim 5; (2) PO Box 8147, the address located on the claim transfer filed with the Court; and (3) PO Box 2461, the address where Debtors served their plan. The record does not detail the precise function of each of these PO boxes, but, presumably, each PO Box is associated with a different department at AES.¹

Assuming, *arguendo*, AES was a creditor at the time of the service of the plan, or if Debtors' plan provision were to have properly identified the debt, would AES have received due process through the service effectuated by Debtors? The Supreme Court, in *Espinosa*, deferred to the traditional recitation of due process in this situation: "[d]ue process requires notice 'reasonable calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010) (*quoting Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). In *Espinosa*, the Supreme Court concluded that the creditor had received actual notice ostensibly because United Student Aid Funds, Inc. filed a proof of claim. *Id.* at 265. Here, the same situation is present – Claim 5 was filed prior to the confirmation hearing and appears to be evidence that the holder of Claim 5 had actual notice of the bankruptcy filing prior to confirmation.

III. Equitable Remedies

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Even before the Supreme Court decided *Espinosa*, the Ninth Circuit was of the position that a creditor was precluded from challenging a confirmation order, even if the confirmation order contained an illegal provision, if that creditor failed to object during the confirmation process. *See, e.g., In re Pardee*, 193 F.3d 1083, 1086 (9th Cir. 1999) (*citing Trulis v. Barton*, 107 F.3d 685, 691 (9th Cir. 1995); *In re Gregory*, 705 F.2d 1118, 1121 (9th Cir. 1983)). The Ninth Circuit's approach was the minority approach. *See, e.g., In re Escobedo*, 28 F.3d 34, 35 (7th Cir. 1994) (confirmed plan that failed to comply with Code's requirements was "nugatory"); *see also* 8 Collier on Bankruptcy ¶ 1325.01 (16th ed. 2016) (endorsing the Ninth Circuit's approach, but collecting cases which indicate that the Second, Fourth, Sixth, and Seventh Circuits disagreed).

While *Espinosa* declared that a confirmation order was not void simply because it contained an illegal provision, and Ninth Circuit precedent indicates that a creditor is estopped from challenging a confirmation order after the fact, a review of the case law from the previously dissenting circuits illustrates the procedural mechanisms available to the Court, rather than a creditor. For instance, one court, in reconsidering and vacating a confirmed Chapter 13 plan stated the following:

Relief from judgment under Rule 60(b) may be granted *sua sponte* by the court. A decision under Rule 60(b) is a matter of the court's discretion. The Rule's requirement that relief be granted within a 'reasonable time' also rests within the sound discretion of the court. While relief under Rule 60(b) is discretionary, it is warranted only upon a showing of extraordinary circumstances that create a substantial danger that the underlying judgment was unjust. The court should also look to whether any intervening rights have been affected by the passage of time since entry of the original judgment.

In re Burgess, 138 B.R. 56, 59 (Bankr. W.D. Wis. 1991); *see also In re Carr*, 318 B.R. 517 (Bankr. W.D. Wis. 2004) (utilizing the Court's discretion to revoke, on equitable grounds, a confirmation order that violated the Code). There is no strict timeline for relief from a judgment or order pursuant to Fed. R. Civ. P. Rule 60(b)(4)-(6). *See, e.g., In re Hanson*, 397 F.3d 482 (7th Cir. 2005) (modifying discharge order to exclude student loan creditor nearly six years later).

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The Court is cognizant of the fact that, unlike most of the cases above, in this situation the Chapter 13 plan was completed, Debtors received a discharge, and the case was closed. The length of time that has elapsed would be a critical factor in any analysis considering whether to revoke or modify the Chapter 13 confirmation order pursuant to Rule 60(b)(6). Currently, there is no motion filed by AES pending before the Court implicating a Rule 60(b)(6) analysis, and because the Court finds that Debtors' drafting errors precludes a finding that Claim 5 was discharged, the Court declines to undertake such analysis at the current time.

IV. CONCLUSION

In accordance with Section II.I, *supra*, the Court concludes that Claim 5 was not discharged. Because Claim 5 was not discharged, there can be no violation of the discharge injunction, and, therefore, the motion is DENIED.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Brad Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Joint Debtor(s):

Deborah Ann Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Movant(s):

Brad Stoddard

Represented By
Matthew D Resnik

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Matthew D Resnik
David Brian Lally
David Brian Lally

Deborah Ann Stoddard

Represented By
Matthew D Resnik
Matthew D Resnik
David Brian Lally
David Brian Lally

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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#11.10 CONT Order to Show Cause Hearing Why Matthew Resnik, Brad and Deborah Stoddard should not be sanctioned
(Holding date)

From: 8/31/17, 10/2/17, 10/18/17

Also #11

EH__

Docket 110

Tentative Ruling:

10/18/17

BACKGROUND

On January 28, 2011, Brad & Deborah Stoddard ("Debtors") filed a Chapter 13 voluntary petition. On May 24, 2011, Debtors' Chapter 13 plan was confirmed. The plan contained the following provision, section V.F.: "The debt of American Education Services will be discharged; the school has been stripped of accreditation and is on probation." On December 5, 2016, Debtors received a discharge, and, on January 13, 2017, the case was closed.

On May 11, 2017, Debtors filed a motion for an order to show cause why creditor American Educational Services ("AES") should not be held in contempt court, and for damages and attorney's fees, for intentionally violating the discharge injunction. Because of inadequate service, the motion was originally denied without prejudice, and Debtors refiled the motion on June 1, 2017. AES filed its opposition on June 8, 2017. At a hearing on the matter on July 27, 2017, the Court continued the matter to

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On July 31, 2017, the Court issued its Order to Show Cause why Matthew Resnik ("Resnik"), Brad Stoddard, and Deborah Stoddard should not be sanctioned for including a prohibited provision in a Chapter 13 plan (the "OSC"). Debtors filed their opposition on August 14, 2017. Resnik filed his opposition on August 17, 2017. AES filed its reply on August 24, 2017. Resnick filed supplemental responses on September 21 and 22, 2017.

DISCUSSION

I. Introduction

The OSC is issued in light of, and accordance with, the Supreme Court's decision in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). In *Espinosa*, the bankruptcy court had confirmed a Chapter 13 plan which purported to discharge student loan debt without complying with the applicable procedural requirements. After intercepting debtor's income tax refund to use towards payment of student loans, the creditor argued that the bankruptcy court's order confirming the debtor's Chapter 13 plan should be declared void. The Supreme Court held that, absent a jurisdictional or due process violation (which was not present) the bankruptcy court's legal error in confirming the Chapter 13 plan with a provision that impermissibly discharged student loan debt, did not render the order void. At the conclusion of its opinion, the Supreme Court opined:

We acknowledge the potential for bad-faith litigation tactics. But expanding the availability of relief under Rule 60(b)(4) is not an appropriate prophylaxis. As we stated in *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992), "debtors and their attorneys face penalties under various provisions for engaging in improper conduct in bankruptcy proceedings." *Id.* at 644; *see also* Fed. R. Bankr. P. Rule 9011. The specter of such penalties should deter bad-faith attempts to discharge student loan debt without the undue hardship finding

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Congress required.

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Espinosa, 559 U.S. at 278. Here, the Court is tasked with interpreting and implementing the guidance provided by the Supreme Court in *Espinosa*.

Debtors and Resnick have filed separate responses to the Court's OSC. Debtors have raised five arguments in their opposition: (1) that the Court already found that the plan was filed in good faith; (2) that the plan must be given *res judicata* effect; (3) that the Court is exceeding its discretionary sanctioning authority; (4) that the OSC is an illegal *ex post facto* law; and (5) that Fed. R. Bankr. P. Rule 9011 is inapplicable. Resnick offers the following categories of arguments in his opposition: (1) use of the Court's inherent sanctioning authority is inappropriate here; (2) Rule 9011 sanctions require a contempt finding; (3) Section 105 is inapplicable; and (4) the plan provision at issue is not prohibited. The Court will analyze the respondents' arguments separately.

II. Debtors' Opposition

A. The Court's Good Faith Finding

11 U.S.C. § 1325(a)(3) states:

- (a) Except as provided in subsection (b), the court shall confirm a plan if –
- (3) the plan has been proposed in good faith and not by any means forbidden by law

Debtors argue that: "[i]t necessarily follows [from § 1325(a)(3)] that the Court has

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already made an express finding that the Plan was filed in good faith." This result does not necessarily follow from the language of the statute. The plain language of § 1325 (a) operates to eliminate the discretion of the court if the court finds that the debtor has satisfied the nine subsections of § 1325(a); the provision does not state the consequences of a finding that some, but not all, of the § 1325(a) subsections have been satisfied. As is stated by the leading bankruptcy treatise:

The standards set forth in section 1325(a), however, are not requirements that must be met in every case before a plan can be confirmed. Unlike section 1322 (a), section 1325(a) does not state that "the plan shall" comply with its listed criteria. Nor does it state, as does section 1129(a), that the court shall confirm the plan *only if* certain requirements are met. Instead it states only that if its criteria are met the court must confirm the plan. Therefore, the court has discretion to confirm a plan that does not comply with all of the standards of section 1325(a), particularly if no party objects.

8 Collier on Bankruptcy ¶ 1325.01 (16th ed. 2016) (footnotes omitted).

Despite the plain language of the statute, the Ninth Circuit Court of Appeals, without any independent analysis, and relying on an out of circuit bankruptcy court decision, has determined that the requirements of § 1325(a) are mandatory for Chapter 13 plan confirmation. *See In Chinichian*, 784 F.2d 1440, 1443-44 (9th Cir. 1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met.") (*citing In re Elkind*, 11 B.R. 473, 476 (Bankr. D. Colo. 1981)). While it remains unclear from where the mandatory characterization of § 1325(a) arose, a variety of courts have, in passing, assumed that the § 1325(a) standards are mandatory for plan confirmation. *See, e.g., Assocs. Comm. Corp. v. Rash*, 520 U.S. 953, 956 (1997) ("To qualify for confirmation under Chapter 13, the Rash's plan had to satisfy the requirements set forth in § 1325(a) of the Code."); *Shaw v. Aurgroup Fin. Credit Union*, 552 F.3d 447, 459 (6th Cir. 2009) ("Numerous district and bankruptcy courts outside the Fifth, Ninth, Tenth, and Eleventh Circuits, including courts within this circuit, have also held, suggested, or assumed that the provision in § 1325(a) are mandatory.") (collecting cases). *But see In re Szostek*, 886 F.2d 1405, 1411 (3rd Cir. 1989) ("On the other hand, if the conditions of § 1325 are not met, although the requirements of § 1322 are fulfilled, the court has the discretion to confirm the plan. If Congress had intended for

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§ 1325(a) to be mandatory, it could have included that requirement with the requirements already listed in § 1322); *see also Matter of Escobedo*, 28 F.3d 34, 34 (7th Cir. 1994) ("We note, however, as did the court in *Szostek*, that while the provisions of § 1325(a)(5) may be discretionary[,] the requirements of § 1322(a)(2) are mandatory.). Indeed, even *Espinosa* appears to implicitly assume that the § 1325(a) requirements are mandatory. *See* 559 U.S. 260, 277 ("That is because § 1325(a) instructs a bankruptcy court to confirm a plan *only* if the court finds, *inter alia*, that the plan complies with the 'applicable provisions' of the Code.") (emphasis added). Therefore, it would appear that binding case law suggests that the § 1325(a) requirements, including good faith, are mandatory requirements for confirmation.

B. Res Judicata

While the Court accepts Debtors' argument that, by confirming their Chapter 13 plan, the Court implicitly found that the plan was filed in good faith, the Court rejects Debtors' argument that that finding is *res judicata* with regard to the Court. 11 U.S.C. § 1327(a) states: "The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." The Court is not a creditor and Debtors have advanced no argument as to how § 1327(a) would prevent the Court from revisiting its finding of good faith. In fact, the Ninth Circuit Court of Appeals opinion that concluded the § 1325(a) requirements were mandatory stated the following: "Because section 1325(a)(3) of Title 11 requires the Chinichians to propose their plan in good faith, the bankruptcy court has jurisdiction to revoke a plan if the plan was not filed in good faith." *In re Chinichian*, 784 F.2d 1440, 1442 (9th Cir. 1986). The Ninth Circuit's further comments indicate that it believed such powers were expansive:

The Chinichians argue, however, that because section 1330 is a specific statute it should govern the more general section 105. The *Mancari* rationale that a specific statute cannot be nullified by a more general one is only applicable where a conflict exists.

Section 1330 provides a method of revoking a confirmation order "on request

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of a party in interest." While it does not specifically authorize such a revocation by the court sua sponte, it does not prohibit such action. Section 105 constitutes authority for the court to issue any order necessary to carry out the provisions of the Code. That reservoir of power in no manner conflicts with the authority to act upon the request of an interested party, but constitutes a supplemental method of revocation in the event of fraud. It would be absurd to hold that the bankruptcy court is powerless to correct a fraud unless first requested by an interested party, and that is not what section 1330 provides.

Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.

Further, a bankruptcy court is a court of equity. As a court of equity, it may look through form to the substance of a transaction and devise new remedies where those at law are inadequate. Further, it can modify or vacate its order so long as no intervening right has become vested in reliance thereon. Thus, the bankruptcy court had equitable power to revoke its order partially confirming the Chinichians' plan once it recognized the Chinichians did not file their plan in good faith as required by section 1325(a)(3).

Id. at 1442-43 (citations omitted).

Debtors' argument that § 1327 operates to prevent the Court from modifying its implicit good faith finding when confirming the plan lacks merit. The statute states that the terms of the provisions of a confirmed plan are binding on the debtor and creditors. The Court is not a creditor or a debtor nor is the Court's good faith finding a provision of a confirmed plan. Nor does *res judicata* prevent a court from revoking or amending its own order. Such a principle would eliminate the ability to revoke or modify a judgment altogether, rendering obsolete Fed. R. Civ. P. Rules 59 & 60, in addition to many others legal provisions. Debtors' argument that the Court is bound by its own previous finding due to *res judicata* is not compelling.

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C. The Court Lacks Authority to Issue Sanctions

Debtors' argument that the Court lacks authority to issue sanctions can be summarized in the following: (1) the Court is precluded from finding that the plan was proposed in bad faith due to *res judicata*; and (2) the Court must find that the plan was proposed in bad faith for sanctions to be warranted. Because the Court rejects (1), as outlined above, Debtors' argument must fail.

D. The OSC is an "Illegal Ex Post Facto Law"

In their fourth argument, Debtors argue that this OSC is an *ex post facto* law. As noted by Debtors, Art. 1 §§ 9 & 10 of the Constitution prohibit *ex post facto* laws. Article 1 of the Constitution deals with the legislative branch – the branch of the government that makes laws. The Judicial Branch does not make laws. Debtors' argument that a court order is an *ex post facto* law is therefore, necessarily, invalid.

E. Rule 9011 is Inapplicable

Fed. R. Bankr. P. Rule 9011(b)(2) states:

By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, --

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the

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Fed. R. Bankr. P. Rule 9011(c)(1)(B) states: "[O]n its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto."

Debtors' nine subsection argument why Fed. R. Bankr. P. Rule 9011 is inapplicable is rather chaotic and disorganized. Regardless, the Court acknowledges that, as to Debtors, Rule 9011 sanctions are inapplicable due to the operation of Rule 9011(c)(2) (A). Therefore, the Court agrees that Rule 9011 cannot operate as the source of sanctions against Debtors.

III. Resnick's Opposition

A. Inherent Sanctioning Authority

The Supreme Court has stated: "it is firmly established that the power to punish for contempts is inherent in all courts." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (quoting *Ex parte Robinson*, 19 Wall. 505, 510 (1874)); see also *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir. 2001) ("[T]he district court has the inherent authority to impose sanctions for bad faith, which includes a broad range of willful improper conduct."). The Ninth Circuit has stated: "*Itel* teaches that sanctions are justified when a party acts *for an improper purpose* – even if the act consists of making a truthful statement or a non-frivolous argument or objection. *Fink*, 239 F.3d at 922; see also *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003) (discussing bad faith and willful misconduct).

Nevertheless, as Resnick states: "when there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the Rules, the court ordinarily

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should rely on the Rules rather than the inherent power." *Chambers*, 501 U.S. at 50. Because the Court believes that the existing framework provides an adequate basis for sanctions in this type of situation, the Court need not rely on its inherent sanctioning authority.

B. Rule 9011

When imposing sanctions, *sua sponte*, under Fed. R. Bankr. P. Rule 9011, "sanctions 'will ordinarily be imposed only in situations that are *akin to a contempt of court*.'" *United Nat'l Ins. Co. v. R&D Latex Corp.*, 242 F.3d 1102, 1116 (9th Cir. 2001) (*citing Barber v. Miller*, 146 F.3d 707, 711 (9th Cir. 1998); *see also* Fed. R. Civ. P. Rule 11, Advisory Committee Notes ("Since show cause orders will ordinarily be issued only in situations that are akin to a contempt of court, the rule does not provide a 'safe harbor' to a litigant for withdrawing a claim, defense, etc., after a show cause has been issued on the court's own initiative.")). "[P]rior to imposing court-initiated sanctions, the district court is required to determine whether counsel's conduct is 'akin to contempt.'" *Gonzalez v. Texaco Inc.*, 344 Fed. Appx. 304, 308 (9th Cir. 2009) (*quoting R&D Latex Corp.*, 242 F.3d 1102, 1118)).

In this situation, the Court defers to Bankruptcy Judge TeSelle:

At the hearing on the motions to dismiss conducted by the Court in these cases on May 2, 2000, it was clear to the Court that debtors' counsel included these plan provisions in the hope that they would trap an unwary student loan creditor. If a plan containing a student loan discharge provision is confirmed, debtors and their counsel argue that the student loan obligation is discharged under the theory of *res judicata*, improperly relying on a skewed interpretation of the opinion of the Tenth Circuit Court of Appeals in *In re Andersen*, 179 F.3d 1253 (10th Cir. 1999) to support their position. If an objection to confirmation is raised by either the Trustee or the student loan creditor, the offending language is simply removed from the plan, and debtors are no worse off for their attempt. The Court will not permit this type of gamesmanship on the part of debtors and their counsel to continue. Conduct such as this has no

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place in the practice of bankruptcy law, and will not be tolerated by this Court.

The citation of the opinion of the Tenth Circuit in *Andersen, supra*, as authority for the practice of intentionally inserting language in a chapter 13 plan that violates the Bankruptcy Code and Rules, and as authorizing counsel to stand by silently and thereby induce the Court to confirm a plan that contains a provision that counsel knows violates the Bankruptcy Code and Rules, is at once offensive and specious. Counsel appearing before this Court are officers of the Court and are ethically obligated to inform the Court if they are aware of the existence of a plan provision that renders the plan non-confirmable.

Rather than recognizing their obligations to the Court and to opposing counsel, counsel for debtors in these cases go so far as to suggest that they are compelled by *Andersen* to recommend that their clients include these unlawful plan provisions, implying that their failure to do so might be an act of professional negligence. The Court does not believe that a fair reading of the opinion of the Tenth Circuit in *Andersen* can reasonably lead one to conclude that the Tenth Circuit intended to encourage the practice of intentionally inserting unlawful plan provisions in the hope that confirmation of the plan will occur and the time for appeal will pass before such provisions are noticed so that debtors and their counsel can then claim *res judicata*. Such a skewed reading of *Andersen* fails to account for the ethical obligations owed by members of the bar to the Court and to each other.

This is particularly true given the volume of chapter 13 filings in this district, and the fact that the Court does not have the time to independently review every chapter 13 plan and confirmation order to determine whether an attempt to unlawfully discharge a student loan obligation is being made. Because the Court has apparently been unable to rely on the ethical conduct of some of the counsel representing chapter 13 debtors appearing before it, the Court, up to his point in time, has been forced to rely on a party in interest other than the debtor to point out those instances in which such student loan discharges have been attempted through plan provisions. Where the Court has become aware of such attempts, either through objections by the student loan creditor or through the inclusion of such a provision in the order confirming the chapter 13 plan,

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the Court has refused to confirm the plan containing such language, and has stricken language from confirmation orders attempting to effect a discharge of student loan indebtedness in this manner.

...

In light of the existing case law concerning the impropriety of the inclusion of such student loan discharge provisions in chapter 13 plans, and the unambiguous language of the Bankruptcy Code and Rules, the Court believes that the inclusion of such a provision in a chapter 13 plan and/or order confirming a chapter 13 plan is both unethical and sanctionable conduct pursuant to Bankruptcy Rule 9011. Bankruptcy Rule 9011(b) concerns representations made to the Court. It states that by presenting a paper to the Court, an attorney or unrepresented party certifies to the best of his or her knowledge, information and belief, formed after a reasonable inquiry under the circumstances, that the legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. *See* Fed. R. Bankr. P. Rule 9011 (b)(2).

...

The Court refuses to allow counsel for debtors to turn the inclusion of a student loan discharge provision in a chapter 13 plan into a "can't lose" proposition. The Court therefore concludes that *Andersen* provides no protection from the imposition of sanctions under Rule 9011(b) in cases in which a student loan discharge provision is included in a confirmed chapter 13 plan.

In re Hensley, 249 B.R. 318, 320-323 (Bankr. W.D. Okla. 2000).

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C. Section 105

11 U.S.C. § 105(a) states:

- (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary to enforce or implement court orders or rules, or to prevent an abuse of process.

Resnick offers a single argument in support of his position that § 105(a) is inapplicable: that the provision only applies to violations of a specific court order. Resnick cites *In re Dyer* in support of this statement. 322 F.3d 1178, 1196 (9th Cir. 2003) ("Civil contempt authority allows a court to remedy a violation of a specific order (including 'automatic' orders, such as the automatic stay or discharge injunction).").

Dyer does not explicitly state that § 105(a) is strictly limited to remedying violations of specific court orders, nor does it cite any authority from which it could be inferred that the *Dyer* court had such an opinion. Indeed § 105(a) explicitly mentions, in addition to court orders, rules and "abuse of process"; the latter might be invoked in the absence of a specific court order.

The Supreme Court, on two occasions after *Dyer*, has written an opinion which

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indicates that § 105 is not strictly limited to correcting violations of specific court orders. First, in *Marrama v. Citizens Bank of Mass.*, the Supreme Court wrote:

On the contrary, the broad authority granted to bankruptcy judges to take any action that is necessary or appropriate to prevent an abuse of process described in § 105(a) of the Code, is surely adequate to authorize an immediate denial of a motion to convert filed under § 706 in lieu of a conversion order that merely postpones the allowance of equivalent relief and may provide a debtor with an opportunity to take action prejudicial to creditors.

549 U.S. 365, 375 (2007) (footnote omitted). The "abuse of process" referenced in *Marrama* was not a violation of a specific court order, but, rather, "an unmeritorious attempt to qualify as a debtor under Chapter 13." *Id.*

Second, in *Law v. Siegel*, the Supreme Court stated: "Section 105(a) confers authority to 'carry out' the provisions of the Code." This statement is natural, since the first sentence of § 105(a) states: "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

Here, the Court concludes that a specific and definite court order has not been violated. Nevertheless, the reconciliation of *Dyer* and *Marrama* helps illustrate the proper approach forward. The Ninth Circuit Court of Appeal's instructions that sanctions under § 105(a) are appropriate for violation of a specific and definite court order is derived from the non-bankruptcy standard for civil contempt. *See F.T.C. v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999) (*quoting Stone v. City & Cnty. of S.F.*, 968 F.2d 850, 856 n.9 (9th Cir. 1992)) ("The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court. The burden then shifts to the contemnors to demonstrate why they were unable to comply."). Nevertheless, as illustrated by *Marrama*, the Court's authority under § 105(a) is not strictly limited to issuing sanctions for civil contempt. While a civil contempt finding under § 105(a) may not be appropriate in these circumstances, it does not follow that the Court lacks the ability to adequately and equitably resolve this situation.

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TENTATIVE RULING

The Court is inclined to CONTINUE the hearing for approximately thirty days to allow Debtors to file a supplemental brief addressing why they should not be sanctioned pursuant to the Court's inherent sanctioning authority. No further briefing from Resnick is requested.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Brad Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Joint Debtor(s):

Deborah Ann Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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6:17-14798 Gail Katherine Stump

Chapter 13

#1.00 Motion to Reconsider Order and Notice of Dismissal

EH__

Docket 32

Tentative Ruling:

11/16/17

BACKGROUND

On June 8, 2017, Gail Stump ("Debtor") filed a Chapter 13 voluntary petition. On July 26, 2017, Debtor's Chapter 13 plan was confirmed.

On September 12, 2017, Trustee filed a motion to dismiss for delinquency. On September 27, 2017, Debtor filed her opposition, stating that she would cure the delinquency or file a motion to modify plan. Debtor did not appear at the hearing on the motion to dismiss, Trustee's motion was granted, and the case was dismissed on October 5, 2017.

On October 13, 2017, Debtor filed a motion to vacate dismissal. On October 16, 2017, Trustee filed comments recommending approval if Debtor cured the plan delinquency. Trustee's comments identify a delinquency of \$1,533.48, although the comments were filed one month ago.

DISCUSSION

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Fed. R. Bankr. P. Rule 9024, incorporating Fed. R. Civ. P. Rule 60(b)(1), provides for relief from an order for, among other things, "mistake, inadvertence, surprise, or excusable neglect." Debtor's attorney states that the failure to appear at the hearing on the motion to dismiss was a result of attorney neglect.

Given the conditional approval of the Trustee and the evidence submitted by Debtor, the Court finds that the requested relief is proper assuming that the condition has been satisfied.

TENTATIVE RULING

The Court is inclined to GRANT the motion conditioned on Debtor curing the plan delinquency in full.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Gail Katherine Stump

Represented By
Michael E Clark

Movant(s):

Gail Katherine Stump

Represented By
Michael E Clark
Michael E Clark

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Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18385 Bouchra Bernichi

Chapter 13

#2.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bouchra Bernichi

Represented By
Nicholas S Nassif

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18388 Gregorio Orozco Sotelo

Chapter 13

#3.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gregorio Orozco Sotelo

Represented By
Lisa F Collins-Williams

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18423 Jennifer Marie Silva

Chapter 13

#4.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/30/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jennifer Marie Silva

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18461 Helen Roque Robles

Chapter 13

#5.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/23/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Helen Roque Robles

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18481 Leonel Villa and Lucila Pineda

Chapter 13

#6.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Leonel Villa

Represented By
Luis G Torres

Joint Debtor(s):

Lucila Pineda

Represented By
Luis G Torres

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18510 Larry Gene Hannah and Susan Harris Hannah

Chapter 13

#7.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/30/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Larry Gene Hannah	Pro Se
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Joint Debtor(s):

Susan Harris Hannah	Pro Se
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Trustee(s):

Rod (MH) Danielson (TR)	Pro Se
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6:17-18531 Victor Manuel Rosales

Chapter 13

#8.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victor Manuel Rosales

Represented By
D Justin Harelik

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18535 Manuel Mayorga and Teodora Mayorga

Chapter 13

#9.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Mayorga

Represented By
Curtis R Aijala

Joint Debtor(s):

Teodora Mayorga

Represented By
Curtis R Aijala

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18541 Maria Del Carmen Alvarez

Chapter 13

#10.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/31/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Del Carmen Alvarez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18552 Chiu Ng

Chapter 13

#11.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 10/31/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chiu Ng

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18720 Patricia Morales

Chapter 13

#12.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Re: 916 Sperry Dr, Colton CA 92324 and 2012 Nissan Titan, debtors residence and vehicle

MOVANT: PATRICIA MORALES

EH__

Docket 14

Tentative Ruling:

11/16/17

Based on evidence establishing failure of prior case was the fault of prior counsel, the Court is inclined to GRANT the motion, continuing the automatic stay as to all creditors. The notice, however, does not provide any direction regarding opposition.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Patricia Morales

Represented By
Dana Travis

Movant(s):

Patricia Morales

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:14-13884 Sylvia Jimenez Gomez

Chapter 13

#13.00 Trustee's Motion to Dismiss Case

EH__

Docket 55

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sylvia Jimenez Gomez

Represented By
Leonard J Cravens

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:14-23150 Vivian Munson

Chapter 13

#14.00 CONT Trustee's Motion to Dismiss Case

From: 10/19/17

EH__

Docket 176

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/24/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vivian Munson

Represented By
Amanda G Billyard
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:14-24084 Michael Lee Barnes and Belinda Ann Barnes

Chapter 13

#15.00 Trustee's Motion to Dismiss Case

EH__

Docket 86

***** VACATED *** REASON: WITHDRAW OF MOTION FILED
11/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Lee Barnes

Represented By
Todd L Turoci

Joint Debtor(s):

Belinda Ann Barnes

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:15-11540 Jesus Manuel Gomez and Maria Gomez

Chapter 13

#16.00 Trustee's Motion to Dismiss Case (Delinquency)

EH__

Docket 93

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus Manuel Gomez

Represented By
Dana Travis

Joint Debtor(s):

Maria Gomez

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:15-12820 Jose Ceja, Jr and Chasity Ann Ceja

Chapter 13

#17.00 Trustee's Motion to Dismiss Case (Delinquency)

EH__

Docket 164

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Ceja Jr

Represented By
Dana Travis

Joint Debtor(s):

Chasity Ann Ceja

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:15-13218 Ramiro J Cruz and Norma Idalia Cruz

Chapter 13

#18.00 Trustee's Motion to Dismiss Case

EH__

Docket 65

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
10/24/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ramiro J Cruz

Represented By
Summer M Shaw
Jenny L Doling

Joint Debtor(s):

Norma Idalia Cruz

Represented By
Summer M Shaw
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:15-13352 Sortan Melvin Prior, Sr. and Janna Renee Prior

Chapter 13

#19.00 Trustee's Motion to Dismiss Case

EH__

Docket 110

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sortan Melvin Prior Sr.

Represented By
Jenny L Doling
Summer M Shaw

Joint Debtor(s):

Janna Renee Prior

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 16, 2017

Hearing Room 303

12:31 PM

6:15-19152 Carol Elizabeth Tenney

Chapter 13

#20.00 Trustee's Motion to Dismiss Case

EH__

Docket 54

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carol Elizabeth Tenney

Represented By
David Lozano

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 16, 2017

Hearing Room 303

12:31 PM

6:16-15581 Dexter Humphrey

Chapter 13

#21.00 Motion to vacate dismissal and Reinstate Chapter 13 Case

EH__

Docket 62

Tentative Ruling:

11/16/17

BACKGROUND

On June 22, 2016, Dexter Humphrey ("Debtor") filed a Chapter 13 voluntary petition. On August 3, 2016, Debtor's Chapter 13 plan was confirmed.

On July 5, 2017, Trustee filed a motion to dismiss for failure to provide tax returns/receipts. On July 14, 2017, Debtor filed his opposition, stating that he had received an extension on his federal tax returns, and would submit the returns when completed. Debtor did not appear at the hearing on the motion to dismiss, Trustee's motion was granted, and the case was dismissed on July 25, 2017. Debtor states that he e-mailed the tax returns to Trustee that same day.

On August 3, 2017, Debtor filed a motion to vacate dismissal. On September 28, 2017, Trustee filed comments recommending approval if the motion was properly noticed and if Debtor cured the plan delinquency. Trustee's comments identify a delinquency of \$8,539, although the comments were filed more than one month ago.

DISCUSSION

**United States Bankruptcy Court
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Riverside
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Thursday, November 16, 2017

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12:31 PM

CONT... Dexter Humphrey

Chapter 13

Fed. R. Bankr. P. Rule 9024, incorporating Fed. R. Civ. P. Rule 60(b)(1), provides for relief from an order for, among other things, "mistake, inadvertence, surprise, or excusable neglect." Debtors state that the tax returns were e-mailed to Trustee the day the case was dismissed, and that Debtor miscalendared the hearing date.

Given the conditional approval of the Trustee and the evidence submitted by Debtor, the Court finds that the requested relief is proper assuming that the condition has been satisfied.

TENTATIVE RULING

The Court is inclined to GRANT the motion conditioned on Debtor curing the plan delinquency in full.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Dexter Humphrey

Represented By
Michael J Hemming

Movant(s):

Dexter Humphrey

Represented By
Michael J Hemming

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

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CONT... Dexter Humphrey

Chapter 13

**United States Bankruptcy Court
Central District of California
Riverside
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Thursday, November 16, 2017

Hearing Room 303

12:31 PM

6:16-21232 Alejandro Salinas, Jr.

Chapter 13

#22.00 CONT Trustee's Motion to Dismiss Case

From: 11/2/17

EH__

Docket 47

***** VACATED *** REASON: CASE DISMISSED 11/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alejandro Salinas Jr.

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Courtroom 303 Calendar**

Thursday, November 16, 2017

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12:31 PM

6:16-21233 Grady Singleton, III and Michelle Singleton

Chapter 13

#23.00 Trustee's Motion to Dismiss Case

EH__

Docket 56

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Grady Singleton III

Represented By
Paul Y Lee

Joint Debtor(s):

Michelle Singleton

Represented By
Paul Y Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Thursday, November 16, 2017

Hearing Room 303

12:31 PM

6:17-10702 Miriam Louise Preisendanz

Chapter 13

#24.00 Trustee's Motion to Dismiss Case

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miriam Louise Preisendanz

Represented By
Danny K Agai

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 16, 2017

Hearing Room 303

12:31 PM

6:17-11131 Bruce Howard Ruggles and Ann Marie Ruggles

Chapter 13

#25.00 Trustee's Motion to Dismiss Case

EH__

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bruce Howard Ruggles

Represented By
John F Brady

Joint Debtor(s):

Ann Marie Ruggles

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Thursday, November 16, 2017

Hearing Room 303

12:31 PM

6:17-11538 Michael Ray Sandoval

Chapter 13

#26.00 CONT Trustee's Motion to Dismiss Case

From: 11/2/17

EH__

Docket 51

***** VACATED *** REASON: WITHDRAW OF MOTION FILED
11/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Ray Sandoval

Represented By
Michael E Clark
Barry E Borowitz

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 16, 2017

Hearing Room 303

12:31 PM

6:17-14359 Lashanda Moniek Shelton

Chapter 13

#27.00 Trustee's Motion to Dismiss Case

EH__

Docket 26

***** VACATED *** REASON: WITHDRAW OF MOTION FILED
11/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lashanda Moniek Shelton

Represented By
Lionel E Giron
Kevin Tang

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 16, 2017

Hearing Room 303

12:31 PM

6:17-15604 Mandy Catron

Chapter 13

#28.00 Trustee's Motion to Dismiss Case

EH__

Docket 20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mandy Catron

Represented By
Stephen S Smyth

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Courtroom 303 Calendar**

Thursday, November 16, 2017

Hearing Room 303

12:31 PM

6:13-25621 Gildardo R Herrera and Stephanie D Herrera

Chapter 13

#29.00 Trustee's Motion to Dismiss Case

EH__

Docket 95

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gildardo R Herrera

Represented By
Lisa H Robinson
John F Brady

Joint Debtor(s):

Stephanie D Herrera

Represented By
Lisa H Robinson
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 16, 2017

Hearing Room 303

12:31 PM

6:16-16263 Tanyua A Gates-Holmes

Chapter 13

#30.00 Trustee's Motion to Dismiss Case

EH__

Docket 63

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tanyua A Gates-Holmes

Represented By
John F Brady

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 16, 2017

Hearing Room 303

12:31 PM

6:13-10251 Brandon Kent Blevins and Teresa Taylor Blevins

Chapter 13

#31.00 CONT Trustee's Motion to Dismiss Case

From: 11/13/17

EH__

Docket 216

***** VACATED *** REASON: WITHDRAW OF MOTION FILED
11/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brandon Kent Blevins

Represented By
Raj T Wadhvani

Joint Debtor(s):

Teresa Taylor Blevins

Represented By
Raj T Wadhvani

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 22, 2017

Hearing Room 303

1:30 PM

6:17-10724 Bausman and Company Incorporated

Chapter 7

#1.00 Motion for Order Approving the Sale fo Personal Property of the Bankruptcy Estate Free and Clear of Liens (used Torit "484 RFW-12" Reverse Air Pump Filter)

EH__

Docket 115

Party Information

Debtor(s):

Bausman and Company Incorporated

Represented By
William A Smelko

Trustee(s):

Robert Whitmore (TR)

Represented By
Franklin C Adams

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 27, 2017

Hearing Room 303

1:00 PM

6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:09-01235 DIAMOND v. Empire Partners, Inc., a California Corporation et

**#1.00 CONT Status Conference re complaint
HOLDING DATE**

From: 3/6/13, 6/5/13, 9/11/13, 11/13/13,12/18/13, 2/5/14, 3/12/14, 4/9/14,
4/16/14, 5/21/14, 8/27/14, 8/28/14, 9/10/14, 9/29/14, 11/10/14, 11/19/14,
1/21/15, 1/28/15, 2/19/15, 3/24/15, 5/28/15, 6/23/15, 8/12/15, 9/18/15, 10/6/15,
12/8/15, 1/20/16, 2/18/16, 3/23/16, 4/5/16, 4/13/16, 4/22/16, 6/6/16, 7/25/16,
10/3/16, 11/14/16, 1/23/17, 2/27/17, 4/24/17, 6/26/17, 8/2/17, 10/25/17

EH____

Docket 1

Tentative Ruling:

Party Information

Debtor(s):

Empire Land, LLC

Represented By
James Stang
Robert M Saunders
Michael I Gottfried
----- O'melveny & Myers
Dean A Ziehl
Jonathan A Loeb
P Sabin Willett
Richard K Diamond (TR)
Jeffrey Rosenfeld

Defendant(s):

DOES 1 through 100, inclusive

Pro Se

Empire Partners, Inc., a California

Represented By
David Loughnot

**United States Bankruptcy Court
Central District of California
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CONT... Empire Land, LLC

Chapter 7

Jonathan A Loeb
Jeffrey Rosenfeld

Plaintiff(s):

RICHARD K. DIAMOND

Represented By
Richard S Berger
Michael I Gottfried
Aleksandra Zimonjic
Monica Rieder
John P Reitman
Peter M Bransten
Cynthia M Cohen
Roye Zur

Trustee(s):

Richard K Diamond (TR)

Represented By
Michael I Gottfried
Richard S Berger
Rodger M Landau
Richard K Diamond
Peter M Bransten
Aleksandra Zimonjic
Monica Rieder
Lisa N Nobles
Peter J Gurfein
Paul Hastings
Roye Zur
Amy Evans
Best Best & Krieger
Franklin C Adams
Thomas J Eastmond

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Monday, November 27, 2017

Hearing Room 303

1:00 PM

6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:10-01319 DIAMOND v. Empire Partners, Inc., a California Corporation et

#2.00 Motion for Order Determining that Defendants have Consented to the Bankruptcy Court's Entry of a Final Order

Advanced From: 11/29/17

Also #3

EH__

Docket 424

Tentative Ruling:

11/27/2017

On April 23, 2010, the duly appointed chapter 7 trustee for the estate of Empire Land, LLC (the "Debtor"), Richard K Diamond (the "Trustee") filed the instant adversary proceeding ("EPI 2"). The complaint asserts claims for breach of fiduciary duty, avoidance of fraudulent conveyances, respondeat superior liability, professional negligence, aiding and abetting breach of fiduciary duty ("Complaint") against Larry Day, Empire Partners, Inc., Neil Miller, James Previti, and Paul Roman (collectively, "Defendants").

On October 18, 2017, the Trustee filed a Motion for Order Determining that Defendants have Consented to the Bankruptcy Court's Entry of a Final Order ("Motion"). On November 13, 2017, Defendants filed their opposition to the Motion ("Opposition"). A reply to the Opposition was filed on November 21, 2017 ("Reply").

The Court notes the following dates and facts and filings in the EPI 2 case for the record:

1. Defendants filed a Motion to Dismiss ("MTD") on July 2, 2010. That motion indicated that Defendants would not consent to the entry of final orders or

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Empire Land, LLC

Chapter 7

judgments by the bankruptcy judge. (MTD at 2:17-19);

2. On January 9, 2012, Defendants filed their motion to withdraw the reference with the District Court ("First Withdrawal Motion").
3. Defendants filed their answer to the Complaint on April 6, 2012 ("Answer"). The Answer indicates at ¶ 31 that they do not consent to the entry of final orders or judgment by the Bankruptcy Court;
4. On March 7, 2014, Defendants filed a Motion for Order Barring the Trustee from Seeking Damages and to Compel the Trustee to Respond Further to Interrogatories and to Produce Communications with a Third Party ("First Discovery Motion");
5. On June 12, 2014, Defendants filed a Motion to Enforce Court's May 15, 2014, Order on the First Discovery Motion ("Motion to Compel");
6. On July 17, 2014, Defendants filed their Motion for Summary Judgment (the "MSJ");
7. On September 10, 2014, Defendants filed their Motion to Bar Trustee from Using Jeffrey E. Brandlin as an Expert Witness ... "at any trial or hearing" (the "Second Discovery Motion");
8. On May 27, 2015, the District Court denied the First Withdrawal Motion without prejudice and instructing that any renewed motion by Defendants address the effect of *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1948 (2015) on the ability to seek withdrawal in EPI 2;
9. On June 29, 2015, Defendants filed their renewed Motion for Withdrawal (the "Second Withdrawal Motion");
10. The Second Withdrawal Motion was denied by the District Court on October 7, 2016.

Separately, the Court takes judicial notice of the motions for summary judgment also filed in the Trustee's related cases against Defendants (EPI 1 and EPI 3). The Defendants filed a request for summary judgment in EPI 1 on July 30, 2014, and in EPI 3 on August 13, 2014.

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DISCUSSION

The issue of Defendants' right to a jury trial is not properly before this Court and as such the Court need not address it here.

I. Procedural Posture of the Motion

As a threshold matter, the Opposition correctly points out that a bankruptcy court may not hear or determine a motion to withdraw the reference. The Trustee in his Reply agrees with this point. However, the Trustee does not address or provide authority to support the procedural posture of its request for relief. The District Court certainly indicated that this Court was the proper forum to conduct the analysis regarding the issue of implied consent but did not remand this issue to the bankruptcy court for determination. Moreover, the Trustee has not couched his Motion as a request for declaratory relief or as any other cognizable request for relief. Instead, the request itself appears premature absent a request for a final order by the Trustee such as the filing of a summary judgment motion, or as a pretrial motion. In the absence of such a request for specific relief, the Trustee's Motion appears procedurally improper and may be denied on this basis.

II. Implied Consent

Parties' consent to the issuance of a final judgment by a bankruptcy court may be express or implied. In *Wellness*, the Supreme Court found that "nothing in the Constitution requires that consent to adjudication by a bankruptcy court be express. Nor does the relevant statute, 28 U.S.C. § 157, mandate express consent." *Wellness*, 135 S. Ct. at 1947–48. However, the Supreme Court stated that "a litigant's consent—whether express or implied—must still be knowing and voluntary." *Id.* at 1948. The key inquiry that the bankruptcy court must make is whether "the litigant or counsel was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case" before the bankruptcy court. *Roell v. Withrow*, 538 U.S. 580, 590 (2003). This standard reflects multiple "pragmatic virtues," including the increasing of judicial efficiency, the limiting of gamesmanship among the parties involved in the proceeding, and the honoring of the Article III right to have claims decided before judges free from potential domination by other branches of government. *Wellness*, 135 S. Ct. at 1948; *Roell*, 538 U.S. at 590–91. Passive and unwitting participation is not sufficient to find consent. *In re Pringle*, 495 B.R. 447, 461 (9th Cir. BAP 2013). Overall, a determination of whether a party consented to the bankruptcy court's jurisdiction requires "a deeply factbound analysis of the procedural

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history" in the proceeding. *Wellness*, 135 S. Ct. at 1949; *In re Empire Land, LLC v. Empire Partners, Inc.*, 2016 WL 5890062, at *2 (C.D. Cal. Oct. 7, 2016); *In re Saenz*, 2016 WL 9021733, at *4 (Bankr. S.D. Tex. Dec. 19, 2016).

The Trustee cites to various cases in support of the argument that Defendants have impliedly consented to the Court's entry of final judgment in the instant case. The Court shall evaluate the Trustee's foremost cases. First, *In re Clean Burn Fuels, LLC ("Conti")*, 540 B.R. 195, 211 (Bankr. M.D.N.C. 2015), amended, No. 11-80562, 2016 WL 5874964 (Bankr. M.D.N.C. Oct. 7, 2016), amended, No. 11-80562, 2017 WL 1194452 (Bankr. M.D.N.C. Mar. 30, 2017), the Conti court provided the following analysis as to the effect of filing of a summary judgment motion on the issue of consent:

In its Amended Answer, Perdue did not consent to this Court's entry of a final judgment. *See* Perdue's Amended Answer, ¶ [Doc. No. 17]. However, Perdue later requested this Court to enter final judgment in its Motion for Summary Judgment. The Supreme Court, in allowing parties to impliedly consent to bankruptcy courts' jurisdiction, noted that such a rule promotes the "pragmatic virtue[]" of "checking gamesmanship." *Wellness*, 135 S.Ct. at 1948; *see also* *Haley v. Barlays Bank Del. (In re Carter)*, 506 B.R. 83, 88 (Bankr.D.Ariz.2014) ("If a *Stern* objection were not deemed waived by the party making it seeking summary judgment, then the party could seek or permit a substantive ruling by the Bankruptcy Court, and then waive that objection if the ruling is favorable but insist on it if unfavorable, and get a second bite at the apple."). To prevent the gamesmanship described in *Haley*, this Court will interpret Perdue's Motion for Summary Judgment as its consent to this Court's entry of a final judgment.

Conti at n. 2. The *Haley* Court, in turn, found that the filing of the summary judgment amounted to sandbagging and found implied consent on that basis. *Haley* at 88. In *Haley*, the Court opined that:

Obviously if judgment is favorable to the objector he will then waive it, but will insist upon it if judgment is unfavorable. That strategy would be available even if the *Stern* objector is vociferously making the objection, as loudly as Bre'r Rabbit, even while trying the case to the Bankruptcy Court. Perhaps to avoid such litigation strategy it will be necessary for courts to adopt a rule that the *Stern* objection is waived or forfeited unless the objector promptly moves for withdrawal

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of the reference and prosecutes that motion to conclusion in the District Court, as the *Bellingham* defendant apparently failed to do.

Haley at 88-89. Here, Defendants' *conduct* (notwithstanding their statements to the contrary) evinces implied consent. Thus, by their conduct, Defendants must have waived or forfeited their right to have the District Court hear the case in order for this Court to assert jurisdiction for entry of final orders. *See Pringle*, 495 B.R. at 462.

In *Pringle*, the Ninth Circuit BAP concluded that while "sandbagging" may be sufficient for consent, it is not necessary to find implied consent. *Id.* at 458. In *Pringle*, the BAP evaluated whether in the absence of sandbagging, implied consent under *Bellingham* requires a finding that a party forfeited or waived its right to have an Article III court hear the case. Here, it cannot be argued that the Defendants forfeited their objection because they raised their non-consent early on. Instead, pursuant to *Pringle*, the issue before this Court is whether the Defendants, by their conduct, waived their right to have their case heard by an Article III court – *i.e.*, whether they intentionally relinquished or abandoned a known right. *Id.* at 460. In *Pringle*, the record was "replete with instances of ... conscious engagement and use of the bankruptcy court and the services of [the] Panel to resolve the Trustee's claim ... undertaken against an almost unavoidable backdrop which called the bankruptcy court's authority into question. *Id.* at 459. In this case, the Court is not persuaded that the Defendants impliedly waived their objection to this Court's authority to enter final orders. In particular, unlike the situation described in *Pringle*, the Defendants demanded an Article III judge soon after the case was filed. The District Court then took the matter under submission for an extended period of time. During that time, the Court acknowledges that the Defendants could have sought a stay of the proceedings in this Court. However, neither *Stern*, *Bellingham Wellness*, nor 28 U.S.C. § 157 requires such action by Defendants. To the contrary, § 157 permits a bankruptcy judge to hear a proceeding that is not a core proceeding (as here). The statute only prohibits the entry of a final order or judgment. 28 U.S.C. § 157(c)(1). Defendants did seek summary judgment in this case. However, none of the cases cited by the Trustee involves a situation where the party objecting to the court's authority did so expressly in their summary judgment or motion to dismiss moving papers.

Defendants motion for summary judgment (although at times inconsistent in its usage of the correct verbiage) more than once mentioned that their request for relief was limited to what they believed this Court was empowered to grant – namely, the issuance of proposed findings and conclusions for consideration by the District

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Court. Additionally, apart from the statements made in the moving papers, the transcript of the hearing underscores the fact that both sides and the Judge all agreed that granting of the motion for summary judgment could and would only result in the issuance of a recommendation to the District Court. (Mot. at Ex. 5, pp 582-585). This is in stark contrast to the facts *True Traditions, LC v. Wu*, 552 B.R. 826 (N.D. Cal. 2015), appeal dismissed (Aug. 29, 2016):

Appellant then filed a cross-motion for summary judgment affirmatively seeking judgment in its favor. The motion did not raise the issue of consent. *See* ER Exh. 12. Indeed, no party mentioned consent until the bankruptcy court revived the issue sua sponte on the record at the May 5, 2014 hearing on the parties' cross-motions for summary judgment. There, the bankruptcy court queried whether Appellant had impliedly consented to the bankruptcy court's entry of final judgment by filing a cross-motion for summary judgment.

Id at 837. Further, the Court is not persuaded by the Trustee's argument that any motion brought under Rule 56 in a non-core matter necessarily compels implied consent by waiver. Such a holding would appear to conflict with the plain language of § 157(c)(1) which accords bankruptcy courts the ability to hear non-core matters but submit proposed findings of fact and conclusions of law to the district court for the entry of a final order or judgment – which is precisely what Defendants requested in their motion for summary judgment. Indeed, all of Defendants actions up to this point, including the discovery motions referenced by the Trustee and the summary judgment motion, constitute pretrial matters which a bankruptcy court may hear notwithstanding that the case may eventually end up in the district court. *See In re Healthcentral.com*, 504 F.3d 775, 788 (9th Cir.2007) (holding that even where there is a Seventh Amendment right to a jury trial in the district court, the bankruptcy court may retain jurisdiction over the case for pretrial matters).

The strongest support of the Trustee's argument is the *Haley* Court's dictum suggesting a rule requiring parties objecting to bankruptcy court authority to wait to proceed in trying a case until their motion to withdraw the reference has been filed and ruled on by a district court. *Haley* at 88-89. Under this view, the Defendants' filing of a summary judgment (notwithstanding their statements that their request was limited to seeking findings of fact and recommendations for the District Court) would likely constitute implied consent because Defendants could have sought a stay of proceedings in this Court or in the District Court pending the resolution of the Motion to Withdraw the Reference. Instead, Defendants chose to continue to litigate in EPI I, II and III not merely in a defensive capacity but also, as indicated by the Trustee, by seeking affirmative relief in all three cases. This Court, however, is not persuaded that the policies underlying § 157, or the policy of judicial efficiency, would be served by

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the rule suggested in *Haley*. As has been acknowledged by Ninth Circuit, the current system promotes judicial economy and efficiency by making use of the bankruptcy court's unique knowledge of Title 11 and familiarity with the actions before them ... [and] ... only by allowing the bankruptcy court to retain jurisdiction over the action until trial is actually ready do we ensure that our bankruptcy system is carried out. *Healthcentral.com* at 788.

For these reasons, the Court finds that Defendants have not impliedly consented to the entry of final orders by this Court and the Court's tentative ruling is to DENY the Motion.

TENTATIVE RULING

Based on the foregoing, the Court's tentative ruling is to DENY the Motion as procedurally improper, and on alternative grounds on the merits because the record does not evince implied consent under *Bellingham* and *Roell*.

Party Information

Debtor(s):

Empire Land, LLC

Represented By
James Stang
Robert M Saunders
Michael I Gottfried
----- O'melveny & Myers
Dean A Ziehl
Jonathan A Loeb
P Sabin Willett
Richard K Diamond (TR)
Jeffrey Rosenfeld

Defendant(s):

Empire Partners, Inc., a California

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

James P Previti

Represented By

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Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

Larry Day

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

Neil M Miller

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

Paul Roman

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

O'Melveny & Myers, LLP

Represented By
Howard Steinberg
P Sabin Willett

Peter T. Healy

Represented By
Howard Steinberg
P Sabin Willett

Plaintiff(s):

RICHARD K DIAMOND

Represented By
Richard S Berger
Peter M Bransten
John P Reitman
Michael I Gottfried
Aleksandra Zimonjic
Monica Rieder
Cynthia M Cohen
Roye Zur

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 27, 2017

Hearing Room 303

1:00 PM

CONT... Empire Land, LLC

Chapter 7

Trustee(s):

Richard K Diamond (TR)

Represented By

Michael I Gottfried

Richard S Berger

Rodger M Landau

Richard K Diamond

Peter M Bransten

Aleksandra Zimonjic

Monica Rieder

Lisa N Nobles

Peter J Gurfein

Paul Hastings

Roye Zur

Amy Evans

Best Best & Krieger

Franklin C Adams

Thomas J Eastmond

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 27, 2017

Hearing Room 303

1:00 PM

6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:10-01319 DIAMOND v. Empire Partners, Inc., a California Corporation et

**#3.00 CONT Status Conference re complaint
HOLDING DATE**

From: 3/6/13, 6/5/13, 9/11/13, 11/13/13,12/18/13, 2/5/14, 3/12/14, 4/9/14,
4/16/14, 5/21/14, 8/27/14, 8/28/14, 9/10/14, 9/29/14, 11/10/14, 11/19/14,
01/21/15, 1/28/15, 2/19/15, 3/24/15, 5/28/15, 6/23/15, 8/12/15, 9/18/15, 10/6/15,
12/8/15, 1/20/16, 2/18/16, 3/23/16, 4/5/16, 4/13/16, 4/22/16, 6/6/16, 7/25/16,
10/3/16, 11/14/16, 1/23/17, 2/27/17, 4/24/17, 8/2/17, 10/25/17

From: 6/26/17

Also #2

EH__

Docket 1

Tentative Ruling:

Party Information

Debtor(s):

Empire Land, LLC

Represented By
James Stang
Robert M Saunders
Michael I Gottfried
----- O'melveny & Myers
Dean A Ziehl
Jonathan A Loeb
P Sabin Willett
Richard K Diamond (TR)
Jeffrey Rosenfeld

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 27, 2017

Hearing Room 303

1:00 PM

CONT... Empire Land, LLC

Chapter 7

Defendant(s):

Peter T. Healy

Represented By
Howard Steinberg
P Sabin Willett

O'Melveny & Myers, LLP

Represented By
Howard Steinberg
P Sabin Willett

Paul Roman

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

Neil M Miller

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

Larry Day

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

James P Previti

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

Empire Partners, Inc., a California

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

Plaintiff(s):

RICHARD K DIAMOND

Represented By
Richard S Berger
Peter M Bransten
John P Reitman

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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1:00 PM

CONT... Empire Land, LLC

Chapter 7

Michael I Gottfried
Aleksandra Zimonjic
Monica Rieder
Cynthia M Cohen
Roye Zur

Trustee(s):

Richard K Diamond (TR)

Represented By

Michael I Gottfried
Richard S Berger
Rodger M Landau
Richard K Diamond
Peter M Bransten
Aleksandra Zimonjic
Monica Rieder
Lisa N Nobles
Peter J Gurfein
Paul Hastings
Roye Zur
Amy Evans
Best Best & Krieger
Franklin C Adams
Thomas J Eastmond

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 27, 2017

Hearing Room 303

1:00 PM

6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:10-01329 DIAMOND v. Empire Partners, Inc., a California Corporation et

#4.00 CONT Status Conference re complaint
(Defendant - Empire Partners, Inc) HOLDING DATE

From: 3/6/13, 6/5/13, 9/11/13, 11/13/13,12/18/13, 2/5/14, 3/12/14, 4/9/14,
4/16/14, 5/21/14, 8/27/14, 8/28/14, 9/10/14, 9/29/14, 11/10/14, 11/19/14,
1/21/15, 1/28/15, 2/19/15, 3/24/15, 5/28/15, 6/23/15, 8/12/15, 9/18/15, 10/6/15,
12/8/15, 1/20/16, 2/18/16, 3/23/16, 4/5/16, 4/13/16, 4/22/16, 6/6/16, 7/25/16,
10/3/16, 11/14/16, 1/23/17, 2/27/17, 4/24/17, 6/26/17, 8/2/17, 10/25/17

EH____

Docket 1

Tentative Ruling:

Party Information

Debtor(s):

Empire Land, LLC

Represented By
James Stang
Robert M Saunders
Michael I Gottfried
----- O'melveny & Myers
Dean A Ziehl
Jonathan A Loeb
P Sabin Willett
Richard K Diamond (TR)
Jeffrey Rosenfeld

Defendant(s):

The James Previti Family Trust

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, November 27, 2017

Hearing Room 303

1:00 PM

CONT... Empire Land, LLC

Chapter 7

Previti Realty Fund, L.P.

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

James P Previti

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

Empire Partners, Inc., a California

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld

Plaintiff(s):

RICHARD K DIAMOND

Represented By
Richard S Berger
Michael I Gottfried
Aleksandra Zimonjic
Monica Rieder
John P Reitman
Peter M Bransten
Cynthia M Cohen
Roye Zur

Trustee(s):

Richard K Diamond (TR)

Represented By
Michael I Gottfried
Richard S Berger
Rodger M Landau
Richard K Diamond
Peter M Bransten
Aleksandra Zimonjic
Monica Rieder
Lisa N Nobles
Peter J Gurfein
Paul Hastings
Roye Zur
Amy Evans

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Hearing Room 303

1:00 PM

CONT... Empire Land, LLC

Best Best & Krieger
Franklin C Adams
Thomas J Eastmond

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Monday, November 27, 2017

Hearing Room 303

1:00 PM

6:14-18549 Matthew Joseph Pautz and Alice Louise Pautz

Chapter 7

#5.00 CONT Order to Show Cause re Bodily Detention Order

From: 8/15/17, 9/18/17, 10/18/17, 11/13/17

EH__

Docket 135

Tentative Ruling:

APPEARANCES WAIVED. Per consent of the parties, the Court will issue an order continuing the matter for approximately 30 days.

Party Information

Debtor(s):

Matthew Joseph Pautz

Represented By
Todd L Turoci
Julie Philippi

Joint Debtor(s):

Alice Louise Pautz

Represented By
Todd L Turoci
Julie Philippi

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe
Samuel J Romero

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:12-27192 Achilles A. LaSalle, Jr. and Elsie LaSalle

Chapter 13

#1.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 28114 Championship Dr, Moreno Valley, CA 92555

MOVANT: HSBC BANK USA, NATIONAL ASSOCIATION

EH__

Docket 100

Tentative Ruling:

11/28/2017
Service: Proper
Opposition: Yes

Debtors have provided evidence that regular payments were made between May 2016 and November 1, 2017 (with the exception of the August 2016 and December 2016 payments for which Debtors are seeking evidence). Exhibit 5, which is the Movant's summary of post-petition payments reflects numerous debits for 2016 payments which appears to corroborate Debtors' assertion that refunds were made due to a mix-up in payments being made by the Trustee's office.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Achilles A. LaSalle Jr.

Represented By
Lazaro E Fernandez

Joint Debtor(s):

Elsie LaSalle

Represented By
Lazaro E Fernandez

Movant(s):

HSBC Bank USA, National

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

CONT... Achilles A. LaSalle, Jr. and Elsie LaSalle

Chapter 13

Armin M Kolenovic

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By

Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:12-33658 Jose Luis Navarro and Alma Gloria Navarro

Chapter 13

#2.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 9107 Bold Ruler Lane, Riverside, CA 92509-3128

MOVANT: HSBC BANK USA

EH__

Docket 79

Tentative Ruling:

11/28/2017
Service: Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT authority to offer loan workout options, and request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Jose Luis Navarro

Represented By
Todd L Turoci

Joint Debtor(s):

Alma Gloria Navarro

Represented By
Todd L Turoci

Movant(s):

HSBC Bank USA, National

Represented By
Erin M McCartney

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

CONT... Jose Luis Navarro and Alma Gloria Navarro

Chapter 13

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:13-15941 Adolfo Ayala

Chapter 13

#3.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 7422 Pheasant Run Rd Riverside CA 92509

MOVANT: BANK OF NEW YORK MELLON

From: 10/3/17

EH__

Docket 56

***** VACATED *** REASON: ORDER ENTERED 11/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Adolfo Ayala

Represented By
Anthony Wilaras

Movant(s):

The Bank Of New York Mellon Fka

Represented By
Jonathan J Damen
Lisa Thomas
Anita F Robertson
Robert P Zahradka

Trustee(s):

Rod (MH) Danielson (TR)

Represented By
Rod (MH) Danielson (TR)

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:14-14942 Nicholas M. Morales and Bertha A. Galvan

Chapter 13

#4.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 804 Tehama Ct Lake Elsinore CA 92530

MOVANT: WELLS FARGO BANK

From: 10/31/17

EH__

Docket 82

Tentative Ruling:

Tentative Ruling:

10/31/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under ¶ 13 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Nicholas M. Morales

Represented By
George J Paukert

Joint Debtor(s):

Bertha A. Galvan

Represented By
George J Paukert

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

CONT... Nicholas M. Morales and Bertha A. Galvan

Chapter 13

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Armin M Kolenovic

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:15-10821 Duane C Lowrey and Joan M Lowrey

Chapter 13

#5.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1065 Mulberry Dr., Mohave Valley, Arizona 86440-9225

MOVANT: SETERUS, INC.

From: 11/14/17

EH__

Docket 32

*** VACATED *** REASON: ORDER ENTERED 11/27/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Duane C Lowrey

Represented By
W. Derek May

Joint Debtor(s):

Joan M Lowrey

Represented By
W. Derek May

Movant(s):

Federal National Mortgage

Represented By
Andrew David Goldberg
Renee M Parker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:15-13218 Ramiro J Cruz and Norma Idalia Cruz

Chapter 13

#6.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 43375 Madison St, Indio, CA 92201

MOVANT: HSBC BANK USA NATIONAL ASSOCIATION

EH__

Docket 69

***** VACATED *** REASON: CONTINUED TO 1/23/18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ramiro J Cruz

Represented By
Summer M Shaw
Jenny L Doling

Joint Debtor(s):

Norma Idalia Cruz

Represented By
Summer M Shaw
Jenny L Doling

Movant(s):

HSBC Bank USA, National

Represented By
Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:16-11302 Robert Allan Gloeckner and Lucia Ann Gloeckner

Chapter 13

#7.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2496-2498 Olive Ave Long Beach CA 90806

MOVANT: US BANK

EH__

Docket 49

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Allan Gloeckner

Represented By
Jenny L Doling

Joint Debtor(s):

Lucia Ann Gloeckner

Represented By
Jenny L Doling

Movant(s):

U.S. Bank NA, successor trustee to

Represented By
Caren J Castle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:16-15678 Nicholas Asamo

Chapter 13

#8.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 7535 Peacock Ave., Highland, CA 92346

MOVANT: WELLS FARGO BANK NA

From: 10/3/17

EH__

Docket 53

***** VACATED *** REASON: ORDER ENTERED 10/17/17**

Tentative Ruling:

10/03/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the stay pursuant to § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3, and 12. DENY alternative request under ¶ 13 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Nicholas Asamo

Represented By
Stephen S Smyth
William J Smyth

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

CONT... Nicholas Asamo

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:16-18035 Jeanie Sullivan

Chapter 13

#9.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 42790 May Pen Road, Bermuda Dunes, California 92203

MOVANT: CIT BANK, N.A.

From: 10/24/17

EH__

Docket 38

***** VACATED *** REASON: ORDER ENTERED 10/27/17**

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: Yes

Parties to discuss adequate protection terms.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jeanie Sullivan

Represented By
Christopher Hewitt

Movant(s):

CIT BANK, N.A.

Represented By
Alexander K Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-10769 Semone Ramone Monroe

Chapter 7

#10.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 32545 Machado St Lake Elsinore CA 92530

MOVANT: WELLS FARGO BANK NA

From: 6/27/17, 8/29/17, 10/31/17

EH__

Docket 40

Tentative Ruling:

Tentative Ruling:

10/31/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3, and 12. DENY alternative request under ¶ 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Semone Ramone Monroe

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

CONT... Semone Ramone Monroe

Chapter 7

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-11831 Gregory Dwight Vit

Chapter 13

#11.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 46048 Paseo Gallante, Temecula, CA 92592

MOVANT: BANK OF NEW YORK MELLON

EH__

Docket 33

Tentative Ruling:

11/28/2017
Service: Proper
Opposition: Yes

Parties to indicate whether arrears have been cured or alternatively, whether APO
agreement has been reached.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Gregory Dwight Vit

Represented By
Christopher J Langley

Movant(s):

Bank Of New York Mellon FKA

Represented By
Erin M McCartney

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-13095 Isabel M Gutierrez

Chapter 13

#12.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2010 Honda Accord, VIN: 1HGCP2F3XAA032134

MOVANT: SANTANDER CONSUMER USA INC

EH__

Docket 30

Tentative Ruling:

11/28/2017

Service is Proper

Opposition: Yes

The Debtor has not provided evidence that regular monthly payments (as opposed to payments on arrears owed) have been made to Movant. The Court is inclined to GRANT the Motion under § 362(d)(1) for failure to make postpetition regular payments and GRANT as to waiver of 4001 stay. The Court is also inclined to DENY as to cause based on a lack of insurance coverage and as to the request for APO as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Isabel M Gutierrez

Pro Se

Movant(s):

Santander Consumer USA Inc.

Represented By
Sheryl K Ith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-13853 Malik Muhammad Asif and Zobia Asif

Chapter 7

#13.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2017 FORD TAURUS, VIN
1FAHP2E85HG110821

MOVANT: CAB WEST LLC

EH__

Docket 128

Tentative Ruling:

11/28/2017
Service is Proper
Opposition: None

GRANT relief from the stay under § 362(d)(1). GRANT waiver of 4001(a)(3) stay.
Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing,
the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Malik Muhammad Asif

Represented By
Todd L Turoci

Joint Debtor(s):

Zobia Asif

Represented By
Todd L Turoci

Movant(s):

CAB WEST, LLC

Represented By
Jennifer H Wang
Sheryl K Ith

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

CONT... Malik Muhammad Asif and Zobia Asif

Chapter 7

Trustee(s):

Arturo Cisneros (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-15122 Keith F Keating

Chapter 13

#14.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 31093 Tecumseh Ct., Temecula 92592-5787

MOVANT: THE BANK OF NEW YORK MELLON

EH__

Docket 20

***** VACATED *** REASON: ORDER ENTERED 11/7/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keith F Keating

Represented By
Sundee M Teeple
Craig K Streed

Movant(s):

The Bank of New York Mellon FKA

Represented By
Mark D Estle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-15809 Beatrice A Diaz

Chapter 7

#15.00 Motion for relief from the automatic stay with supporting declarations REAL
PROPERTY RE: 21 Del Brienza, Lake Elsinore, CA 92532

MOVANT: WILMINGTON SAVINGS FUND SOCIETY FSB

EH__

Docket 23

Tentative Ruling:

11/28/2017

Service: Proper

Opposition: Yes, 11/14/17

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001
(a)(3) stay. GRANT as to ¶3 of prayer for relief.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Beatrice A Diaz

Pro Se

Movant(s):

Wilmington Savings Fund Society,

Represented By
Robert P Zahradka

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-15822 Alfredo Loera and Veronica O Loera

Chapter 13

#16.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 3015 Pepper Tree Lane, San Bernardino, CA 92404

MOVANT: FREEDOM MORTGAGE CORPORATION

From: 11/14/17

EH__

Docket 49

Tentative Ruling:

Tentative Ruling:

11/14/2017

Service is Proper
Opposition: Yes

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under ¶ 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Alfredo Loera

Represented By
Paul Y Lee

Joint Debtor(s):

Veronica O Loera

Represented By
Paul Y Lee

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

CONT... Alfredo Loera and Veronica O Loera

Chapter 13

Movant(s):

Freedom Mortgage Corporation

Represented By
Erin M McCartney

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-19456 Jose E. Toledo and Antonia Toledo

Chapter 13

#17.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 1608 E. La Cadena Dr Riverside CA 92507

MOVAN: JOSE E TOLEDO AND ANTONIA TOLEDO

EH__

Docket 6

Tentative Ruling:

11/28/2017

The Movant improperly checked the box under ¶3(b)(3) in the Notice of Motion. This box indicates to parties that may oppose that an application for order shortening time is pending before the Court and that notice of a time and place of the hearing with an opposition deadline will be served at a later time. No such application is pending as to the instant motion. As such, parties opposing the motion would not have known that they needed to file opposition or appear at the hearing.

Based on the lack of due process, the Motion must be denied. Separately, the prior case was dismissed because the Debtors failed to provide 2016 tax returns, several creditors were omitted from the mailing matrix, and multiple other deficiencies in the filing. Additionally, Counsel for the Debtors in the second case is also current counsel, and the Motion makes no reference to the mistakes that led to dismissal of the second case, and further, provides no explanation as to why he made no appearance at the confirmation hearing where the second case was dismissed on the Trustee's recommendation.

The Movant has simply not established via competent evidence that the current case was filed in good faith.

Party Information

Debtor(s):

Jose E. Toledo

Represented By
Moises A Aviles

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

CONT... Jose E. Toledo and Antonia Toledo

Chapter 13

Joint Debtor(s):

Antonia Toledo

Represented By
Moises A Aviles

Movant(s):

Jose E. Toledo

Represented By
Moises A Aviles
Moises A Aviles

Antonia Toledo

Represented By
Moises A Aviles
Moises A Aviles

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-17650 Timothy Dale Bashor and Pamela Joy Bashor

Chapter 7

#18.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2013 CHRYSLER 300, VIN
2C3CCABT7DH658700

MOVANT: SANTANDER CONSUMER USA INC

Also #19

EH__

Docket 10

Tentative Ruling:

11/28/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001
(a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing,
the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Timothy Dale Bashor

Represented By
Stephen H Darrow

Joint Debtor(s):

Pamela Joy Bashor

Represented By
Stephen H Darrow

Movant(s):

Santander Consumer USA Inc.

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

**CONT... Timothy Dale Bashor and Pamela Joy Bashor
Sheryl K Ith**

Chapter 7

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-17650 Timothy Dale Bashor and Pamela Joy Bashor

Chapter 7

#19.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2013 JEEP COMPASS, VIN
1C4NJCBA XDD244277

MOVANT: SANTANDER CONSUMER USA INC

Also #18

EH__

Docket 11

Tentative Ruling:

11/28/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001
(a)(3) stay. Request for APO is DENIED as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing,
the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Timothy Dale Bashor

Represented By
Stephen H Darrow

Joint Debtor(s):

Pamela Joy Bashor

Represented By
Stephen H Darrow

Movant(s):

Santander Consumer USA Inc.

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

**CONT... Timothy Dale Bashor and Pamela Joy Bashor
Sheryl K Ith**

Chapter 7

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-17959 Oswaldo Yanez Canton and Alex Sanchez

Chapter 7

#20.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 BMW 3 Series Sedan 4D 328I .

MOVANT: BMW BANK OF NORTH AMERICA

EH__

Docket 12

Tentative Ruling:

11/28/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Oswaldo Yanez Canton

Represented By
Frank X Ruggier

Joint Debtor(s):

Alex Sanchez

Represented By
Frank X Ruggier

Movant(s):

BMW BANK OF NORTH

Represented By
Bret D. Allen

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

CONT... Oswaldo Yanez Canton and Alex Sanchez

Chapter 7

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-18490 Luis Padilla

Chapter 7

#21.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Ford F150 Supercrew Cab .

MOVANT: UNIFY FINANCIAL FEDERAL CREDIT UNION

EH__

Docket 9

Tentative Ruling:

11/28/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Luis Padilla

Represented By
Terrence Fantauzzi

Movant(s):

UNIFY Financial Federal Credit

Represented By
Brett P Ryan

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-18552 Chiu Ng

Chapter 13

#22.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1353 W. Mill Street, Suite 110, San Bernardino, Ca

MOVANT: WIND CHIME PROPERTIES LP

CASE DISMISSED 10/31/17

EH__

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chiu Ng

Pro Se

Movant(s):

WIND CHIME PROPERTIES, LP

Represented By
Helen G Long

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-18676 Carlos Lemus and Susana Lemus

Chapter 7

#23.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2011 Nissan Frontier Vin#
1N6AD0ER4BC404708

MOVANT: ALLIANT CREDIT UNION

Also #24

EH__

Docket 10

Tentative Ruling:

11/28/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001
(a)(3) stay. DENY request for APO as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing,
the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Carlos Lemus

Represented By
John H Belton

Joint Debtor(s):

Susana Lemus

Represented By
John H Belton

Movant(s):

Alliant Credit Union

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

CONT... Carlos Lemus and Susana Lemus

Chapter 7

Yuri Voronin

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-18676 Carlos Lemus and Susana Lemus

Chapter 7

#24.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2011 Toyota RAV4 VIN# 2T3ZF4DV2BW101672

MOVANT: ALLIANT CREDIT UNION

Also #23

EH__

Docket 11

Tentative Ruling:

11/28/2017
Service is Proper
Opposition: None

GRANT relief from the stay under §§ 362(d)(1) and (d)(2). GRANT waiver of 4001 (a)(3) stay. DENY request for APO as moot.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Carlos Lemus

Represented By
John H Belton

Joint Debtor(s):

Susana Lemus

Represented By
John H Belton

Movant(s):

Alliant Credit Union

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

CONT... Carlos Lemus and Susana Lemus

Chapter 7

Yuri Voronin

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-19187 Antonio Silveria Lourenco

Chapter 13

#25.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Chevrolet Tahoe and Cruz

MOVANT: ANTONIO SILVERIA LOURENCO

EH__

Docket 14

Tentative Ruling:

11/28/2017

The Notice of Motion improperly indicates that the Motion was filed on regular notice under ¶3(a). Regular notice requires a motion be filed 21 days prior to the scheduled hearing. The instant motion was filed 15 days before the hearing and as such, the Notice of Motion incorrectly indicates to creditors that opposition was due the day after the Motion was filed. The Notice is further deficient in that it does not specifically name the creditors affected by the Motion – Alaska USA Federal Credit Union and Chase. Last, the Motion was not served per FRBP 7004 because it was not served on an officer/director of the credit union.

As to the merits, the prior case was voluntarily dismissed prior to the confirmation hearing because the Debtor had failed to include a contribution being made by the Debtor's girlfriend which is used to make payments on the second vehicle. Schedule I now reflects that Debtor is receiving \$500 in monthly contributions from his girlfriend.

The Court finds that the evidence is sufficient to demonstrate good faith. However, the Court is inclined to DENY the Motion based on the notice deficiencies identified above.

APPEARANCES REQUIRED.

Party Information

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

CONT... Antonio Silveria Lourenco

Chapter 13

Debtor(s):

Antonio Silveria Lourenco

Represented By
Neil R Hedtke

Movant(s):

Antonio Silveria Lourenco

Represented By
Neil R Hedtke
Neil R Hedtke
Neil R Hedtke

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-18675 Alma Delia Ramos

Chapter 7

#26.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 721 E. 9th Street, Space 34, San Bernardino, CA 92410

MOVANT: SANTIAGO COMMUNITIES, INC.

EH__

Docket 13

Tentative Ruling:

11/28/2017
Service is Proper
Opposition: Yes

The Debtor opposes the Motion on the basis that Movant allegedly illegally foreclosed on her interest in the Property. She requests a continuance to hire an attorney who is currently out of town for the holidays.

The Debtor has provided no evidence to support the request. Additionally, the Judgment on Movant's Unlawful Detainer was entered prepetition and Debtor has provided no support for the proposition that the estate has retained any interest in the Property. For these reasons, the Court is inclined to GRANT relief from the stay under §§ 362(d)(1) and (d)(2) based on the prepetition judgment as well as based on the filing of two prior cases affecting the Property which provide support for Movant's argument that the instant case has been filed in bad faith. GRANT waiver of 4001(a)(3) stay. Also, GRANTED as to ¶¶7b, 9b and 11 of the prayer for relief.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Alma Delia Ramos

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

CONT... Alma Delia Ramos

Chapter 7

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

6:17-17142 Alpine Industries LLC

Chapter 7

#26.10 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 14008 Mohawk Road, Apple Valley, CA

MOVANT: PAT DE SANTIS

EH__

Docket 6

Tentative Ruling:

11/28/2017

Service is Proper

Opposition: None

GRANT relief from the stay under §§ 362(d)(1), (d)(2) and (d)(4). Court finds that bankruptcy case was part of a scheme to hinder, delay and defraud creditors based on multiple bankruptcy filings affecting this property. GRANT waiver of 4001(a)(3) stay. GRANT pursuant to ¶ 3. GRANT as to ¶4 because this is the third case pending within the year and no motion to impose the automatic stay has been filed. Request for APO is DENIED as moot.

APPEARANCES WAIVED. Movant to lodge order within 7 days.

Party Information

Debtor(s):

Alpine Industries LLC

Pro Se

Movant(s):

Pat De Santis, a Married Man as his

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

10:00 AM

CONT... Alpine Industries LLC

Chapter 7

Edward T Weber

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

11:00 AM

6:15-14501 Vonetta M Mays

Chapter 13

#27.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1325 Brentwood Cir #D Corona, CA 92882

MOVANT: WELLS FARGO BANK

From: 10/24/17

EH__

Docket 159

*** VACATED *** REASON: ORDER ENTERED 11/6/17

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: Yes

The evidence presented by Debtor does not controvert the evidence presented by Movant, nor does Debtor contest that she is in default. Nor does Debtor provide evidence of value to establish an equity cushion. Subject to adequate protection discussions, the Court is inclined to GRANT the motion under § 362(d)(1) and as otherwise requested.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Vonetta M Mays

Represented By
Christopher J Langley

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Alexander K Lee

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

11:00 AM

CONT... Vonetta M Mays

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

2:00 PM

6:10-48200 Wade Jeffery Osborn and Petrina Y Osborn

Chapter 11

#28.00 Motion By United States Trustee To Convert Or Dismiss Chapter 11 Case

EH__

Docket 154

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/14/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Wade Jeffery Osborn

Represented By
Steven P Chang

Joint Debtor(s):

Petrina Y Osborn

Represented By
Steven P Chang

Movant(s):

United States Trustee (RS)

Represented By
Abram Feuerstein esq
Casper J Rankin
Mohammad Tehrani

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

2:00 PM

6:17-17137 Ricks Patio, Inc

Chapter 11

#29.00 Motion By United States Trustee To Convert Or Dismiss Chapter 11 Case

EH__

Docket 63

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/20/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricks Patio, Inc

Represented By
Robert B Rosenstein

Movant(s):

United States Trustee (RS)

Represented By
Everett L Green

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#30.00 CONT First Omnibus Objection of Debtor-In-Possession Allied Injury Management, Inc. Seeking Disallowance of Certain Proofs of Claim
(Holding Date)

From: 11/8/16, 12/6/16, 1/10/17, 3/7/17,4/4/17, 4/25/17, 6/27/17, 7/11/17, 9/12/17, 11/14/17

Also #31 & #32

EH__

Docket 83

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn
Steven Werth

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#31.00 CONT Motion for Turnover of Property of the Estate

From: 10/24/17, 10/31/17

Also #30 & #32

EH__

Docket 303

***** VACATED *** REASON: CONTINUED TO 12/19/17 AT 2:00 P.M.**

Tentative Ruling:

10/31/2017

The hearing on the Motion is continued to November 28, 2017, at 2:00 p.m.
as a holding date.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn
Steven Werth

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

2:00 PM

CONT... Allied Injury Management, Inc.

Steven Werth

Chapter 11

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#32.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 6/7/16, 8/30/16, 9/14/16, 10/20/16, 10/25/16, 12/6/16, 1/10/17, 2/28/17,
3/28/17, 5/30/17, 8/29/17

Also #30 & #31

EH__

Docket 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn
Steven Werth

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01279 Allied Injury Management, Inc. v. One Stop Multi-Specialty Medical Group

#33.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01279. Complaint by Allied Injury Management, Inc. against One Stop Multi-Specialty Medical Group & Therapy, Inc., One Stop Multi-Specialty Medical Group, Inc., Nor Cal Pain Management Medical Group, Inc.. (Charge To Estate). Complaint for (1) Breach of Contract; (2) Account Stated; and (3) Unjust Enrichment Nature of Suit: (14 (Recovery of money/property - other))

From: 1/24/17, 3/7/17, 4/25/17, 6/27/17, 7/11/17, 9/12/17, 11/14/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

One Stop Multi-Specialty Medical

Represented By
Maria K Pum
Maria C Armenta

One Stop Multi-Specialty Medical

Represented By
Maria K Pum
Maria C Armenta

Nor Cal Pain Management Medical

Represented By
Maria K Pum
Maria C Armenta

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

2:00 PM

CONT... Allied Injury Management, Inc.

Chapter 11

Plaintiff(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn
Steven Werth

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

Adv#: 6:16-01225 Cambridge Medical Funding Group II, LLC v. Allied Injury Management,

#34.00 CONT Status Conference Re: Complaint by Cambridge Medical Funding Group II, LLC against Allied Injury Management, Inc., John C. Larson. 02 - Other e.g. other actions that would have been brought in state court if unrelated to bankruptcy

From: 11/1/16, 12/6/16, 1/31/17, 2/28/17, 3/28/17, 5/30/17, 8/29/17, 10/3/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Defendant(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

John C. Larson

Pro Se

Plaintiff(s):

Cambridge Medical Funding Group

Represented By
Kenneth Hennesay

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

2:00 PM

CONT... Allied Injury Management, Inc.

Steven Werth

Chapter 11

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

2:00 PM

6:17-15816 Integrated Wealth Management Inc

Chapter 7

#35.00 CONT Motion for Relief from Stay

MOVANT: CHRIS RISENMAY; JAMES BRAY; NICK CUNNINGTON; DAVID THATCHER; CLARK PENNEY; SHATTUCK LAMM; STEPHEN BIESINGER; MARK THATCHER; BRANDT KUHN; MICHELE SARNA; MARK HAYEK, AND MIKE MCCONNELL

From: 9/26/17, 10/3/17, 10/31/17

Also #36 & #37

EH__

Docket 27

***** VACATED *** REASON: CONTINUED TO 1/18/18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

Movant(s):

Mark Hayek

Represented By
Erwin J Shustak

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

2:00 PM

6:17-15816 Integrated Wealth Management Inc

Chapter 7

#36.00 CONT Motion For Order Restricting Debtor's Use Of Corporate Funds

From: 8/23/17, 10/3/17, 10/31/17

Also #35 & #37

EH__

Docket 6

***** VACATED *** REASON: CONTINUED TO 1/18/18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

Movant(s):

Mark Hayek

Represented By
Erwin J Shustak

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, November 28, 2017

Hearing Room 303

2:00 PM

6:17-15816 Integrated Wealth Management Inc

Chapter 7

#37.00 CONT Status Conference RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual

From: 8/16/17, 8/23/17, 10/3/17, 10/31/17

Also #35 & #36

EH__

Docket 1

***** VACATED *** REASON: ADVANCED TO 11/14/17 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Integrated Wealth Management Inc

Represented By
Andrew B Levin

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

10:00 AM

6:17-17033 Noelle E. Sandoval

Chapter 7

#1.00 CONT Pro se Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc. re 2015 Dodge Journey

From: 11/8/17

EH__

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Noelle E. Sandoval

Represented By
James D. Hornbuckle

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

11:00 AM

6:09-30020 William Scott Graham and Rebecca Sue Graham

Chapter 7

#2.00 Trustee's Final Report and Applications for Compensation

EH__

Docket 55

Tentative Ruling:

11/29/2017

No opposition has been filed.
Service was Proper.

The applications for compensation of the Trustee and Counsel for the Trustee, have been set for hearing on the notice required by LBR 2016-1.

The only receipts in this case were generated through a settlement approved by the Court on June 13, 2017 [Dkt No. 49; settlement motion, Dkt. No. 46] Paragraph 11 of the settlement motion's statement of facts states the following:

The application also provided that payment of the Fees and Expenses shall be subject to the terms of the application and the approval of the Bankruptcy Court after the filing of either a combined motion for Bankruptcy Court approval of the settlement and the payments of the Fees and Expenses or a separate fee application in accordance with 11 U.S.C. §§ 328 and 330 and Local Bankruptcy Rules.

Paragraph 12 of the settlement motion states the following:

By an order entered on April 20, 2017, the Court granted the application but modified the terms of employment by providing that the payments of the Fees and Expenses shall be subject to the approval of the Bankruptcy Court after the filing of a separate fee application in accordance with 11 U.S.C. §§ 328 and 330 and Local Bankruptcy Rules.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, November 29, 2017

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11:00 AM

CONT... William Scott Graham and Rebecca Sue Graham

Chapter 7

As acknowledged by Trustee, this Court's order authorizing the employment of the Phillips Law Firm as special counsel explicitly required, through the Court's modification of Trustee's proposed order, the filing of a separate fee application if Trustee was to make any payments to the firm. Yet, such an application was not filed.

In the absence of the required fee application, the Court cannot approve the Trustee's proposed distribution to the extent that that proposed distribution includes payments to the Phillips Law Firm. The Trustee's final report, however, does not appear to contemplate payments to the Phillips Law Firm, but, rather, it appears that such payments have already been made in violation of this Court's order.

Given that the majority of the gross receipts in this case appear to have already been paid from the estate in violation of Court order, no further distributions can be authorized at this time.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

William Scott Graham

Represented By
Edward G Topolski

Joint Debtor(s):

Rebecca Sue Graham

Represented By
Edward G Topolski

Trustee(s):

Karl T Anderson (TR)

Represented By
Robert A Hessling

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

11:00 AM

6:09-35625 Pamela J. Carmichael

Chapter 7

#3.00 Motion Seeking an Order Instructing the Trustee to Reissue a Total of Three Checks: (1) For Outstanding Attorney Fees Owed to Doling Shaw & Hanover, APC; and (2) Two Checks Representing the Remaining Balance to be Split Evenly Between Debtor/Decedent's Mother and Father per the Probate Estate § 13101

EH__

Docket 88

Tentative Ruling:

11/29/17

BACKGROUND

On October 26, 2009, Pamela Carmichael ("Debtor") filed a Chapter 13 voluntary petition. On January 13, 2010, Debtor's Chapter 13 plan was confirmed. On April 23, 2010, the case was converted to Chapter 7. On August 16, 2010, Debtor received a discharge, and, three days later, the case was closed.

On March 21, 2016, the case was reopened to administer assets upon the motion of UST. Specifically, the asset to be administered was the proceeds from a class action judgment. After payment of all claims in Debtor's case, there was a surplus of \$28,825.67 to be returned to Debtor. According to Debtor's attorney, she received a check from Trustee in the amount of \$28,825.67 on July 11, 2017. Debtor's attorney states that she had "numerous conversations" with the class-action attorney and the trustee, and that, "[u]ltimately, it was determined that new checks needed to be issued. Specifically, Debtor's attorney requests three checks: (1) \$3,000 for Doling Shaw & Hanover, APC (of which \$1,500 is for "work completed to assist the bankruptcy estate in distributing the surplus funds"); (2) \$12,912.84 to George Charles Carmichael; and (3) \$12,912.84 to Pamela Ehrlich. The Court notes that the total amount of the three

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

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11:00 AM

CONT... **Pamela J. Carmichael** **Chapter 7**
checks is \$28,825.68 – essentially the same amount as the originally issued check.

On November 7, 2017, the Trustee filed a notice of non-opposition.

DISCUSSION

The division of Debtor’s probate estate as between successors, and resolution of claims against the probate estate, are matters of probate law, not bankruptcy law. The Trustee’s responsibility, and this Court’s supervisory duty, is limited to assuring that the Trustee issues the surplus check to Debtor. The subsequent division of those funds does not appear to be a matter for the bankruptcy court, but is a matter for probate law. While it is unclear whether Court approval of fees is required, no such approval is requested here. Last, importantly, it does not appear the motion has been noticed to or served upon a representative of the probate estate or upon Debtor’s heirs.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Pamela J. Carmichael	Represented By Jenny L Doling
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Movant(s):

Pamela J. Carmichael	Represented By Jenny L Doling
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Trustee(s):

Helen R. Frazer (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

11:00 AM

6:14-14377 Hilary D Hill

Chapter 7

#4.00 Motion to Avoid Lien 956 South Calle Tomas, Palm Springs, Ca 92264 with Robert A. Nellessen

EH__

Docket 45

Tentative Ruling:

11/29/2017

The Court is inclined to allow the parties the opportunity to obtain appraisals or other valuations of the subject property.

Alternatively, Debtor's evidence of the amount of the lien of Wells Fargo refers to the balance as of the filing of the motion. While Debtor is free to brief the appropriate time for determining the amount of a lien, in the absence of any argument on the issue, the Court concludes that the appropriate date is the petition date.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Hilary D Hill

Represented By
Matthew D Resnik
David Brian Lally

Movant(s):

Hilary D Hill

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

11:00 AM

CONT... Hilary D Hill

Chapter 7

Matthew D Resnik
David Brian Lally

Trustee(s):

Steven M Speier (TR)

Represented By
Robert P Goe
Elizabeth A LaRocque

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

11:00 AM

6:15-12250 Olga L Morales

Chapter 7

#5.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 75

Tentative Ruling:

11/29/2018

No opposition has been filed.

Service was Proper.

The applications for compensation of the Trustee and Counsel for the Trustee, have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 2,787.49

Trustee Expenses: \$ 157.77

Attorney Fees: \$ 16,130.12

Attorney Costs: \$ 612.77

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Olga L Morales

Represented By
Craig J Beauchamp

Trustee(s):

Robert Whitmore (TR)

Represented By
Franklin C Adams

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

11:00 AM

CONT...

Olga L Morales

Cathy Ta

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

11:00 AM

6:17-12274 Denny L Rinehart

Chapter 7

#6.00 Application for Compensation First Application for Approval of Fees and Reimbursement of Expenses by Shulman Hodges & Bastian LLP, Attorneys for the CH 7 Trustee; Decl: of Lynda T Bui in Support: for Lynda T Bui, Trustee's Attorney, Period: 5/4/2017 to 11/8/2017, Fee: \$14,955.00, Expenses: \$356.04.

EH__

Docket 44

Tentative Ruling:

11/29/2017

On March 22, 2017, Denny Rinehart ("Debtor") filed a Chapter 7 voluntary petition. On June 8, 2017, the Court approved the employment application of Shulman Hodges & Bastian LLP ("Applicant") to serve as Trustee's counsel effective May 4, 2017.

On September 14, 2017, the Court approved a settlement between Debtor and the bankruptcy estate whereby the Debtor would pay \$50,000 to the estate in order to retain \$75,000 in unexempt equity in certain real property located in Montclair, California, and \$13,144.02 in certain unexempt insurance policies.

On November 6, 2017, the Court authorized the employment of Donald Fife as accountant for the estate. On November 8, 2017, Applicant filed the instant fee application. That same day, Trustee filed a declaration stating that he did not oppose this fee application. On November 14, 2017, Applicant filed a declaration stating that, after discussions with UST, Applicant had agreed to voluntarily reduce their fees by \$287.

Local Rule 2016-(1)(a)(2)(A) states, in part:

In all cases where the employment of more than one professional person has been authorized by the court, a professional person who files an application for interim fees must give other professional

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Wednesday, November 29, 2017

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11:00 AM

CONT...

Denny L Rinehart

Chapter 7

persons employed in the case not less than 45 days notice of the date and time of the hearing.

Here, there was more than one professional person employed, yet Applicant did not comply with the above rule. Therefore, the Court is inclined to CONTINUE the hearing for approximately 60 days for Applicant to comply with the above rule.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Denny L Rinehart

Represented By
Michael Smith
Sundee M Teeple

Movant(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Rika Kido

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Rika Kido

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

11:00 AM

6:17-16272 Martha Lorena Soto Jimenez

Chapter 7

#7.00 Motion for extension of time to file a complaint objecting to discharge.
Declaration of Todd Frealy

EH__

Docket 27

Tentative Ruling:

11/29/17

BACKGROUND

On July 27, 2017, Martha Jimenez ("Debtor") filed a Chapter 7 voluntary petition.

On September 8, 2017, Trustee filed a complaint against Debtor and three other individuals for: (1) declaratory relief; (2) avoidance of voidable transfer; (3) recovery of avoided transfer; (4) sale of interest of co-owner in property of the estate; and (5) turnover of property. On October 3, 2017, the Court approved the employment of Levene, Neal, Bender, Yoo & Brill as bankruptcy counsel for the estate.

On October 30, 2017, the Chapter 7 Trustee filed a motion for an extension of time to file a complaint objecting to discharge. The Court notes that the meeting of creditors has been continued five times. Trustee notes that Debtor has not appeared at the last two meetings of creditors, and has not substantially complied with Trustee's requests for documents. Trustee requests that the deadline to file a complaint objecting to discharge be extended to January 29, 2018.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, November 29, 2017

Hearing Room 303

11:00 AM

CONT... Martha Lorena Soto Jimenez

Chapter 7

DISCUSSION

Fed. R. Bankr. P. Rule 4004(a) states:

- (1) In a chapter 7 case, a complaint, or a motion under § 727(a)(8) or (9) of the Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 case, the complaint shall be filed no later than the first date set for the hearing on confirmation. In a chapter 13 case, a motion objecting to the debtor's discharge under § 1328(f) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). At least 28 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.

And Fed. R. Bankr. P. Rule 4004(b) states:

- (1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.
- (2) A motion to extent the time to object to discharge may be filed after the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.

Here, Debtors' delay in providing the information requested by the Trustee, and their absence at the last two meetings of creditors, constitutes sufficient cause to extend the deadline. *See* Collier on Bankruptcy ¶ 4004.03[2] (16th ed. 2013) ("A debtor's delays in responding to discovery may be sufficient cause. Obviously, a delay in the meeting of creditors to a date close to or after the deadline may constitute such cause.") (*citing In re McCormack*, 244 B.R. 203 (Bankr. D. Conn. 2000)).

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

11:00 AM

CONT... Martha Lorena Soto Jimenez

Chapter 7

Moreover, Debtor's failure to oppose shall be deemed consent to the relief requested pursuant to Local Rule 9013-1(h).

TENTATIVE RULING

The Court is inclined to GRANT the motion, extending the deadline for Trustee to file a complaint objecting to discharge to January 29, 2018.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Martha Lorena Soto Jimenez

Represented By
Marlin Branstetter

Movant(s):

Todd A. Frealy (TR)

Represented By
Carmela Pagay

Trustee(s):

Todd A. Frealy (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

11:00 AM

6:17-18192 Shannon L Harrell

Chapter 7

#8.00 Motion to vacate dismissal

EH__

Docket 12

Tentative Ruling:

11/29/17

BACKGROUND

On September 29, 2017, Shannon Harrell ("Debtor") filed a skeletal Chapter 7 voluntary petition. On October 11, 2017, Debtor filed the balance of her case commencement documents. The second page of Form 122A-1, however, was missing. On October 17, 2017, the Court dismissed the case for failure to file required documents.

On October 31, 2017, Debtor filed a motion to vacate dismissal.

DISCUSSION

Local Rule 1017-(2)(c) states:

Any motion requesting that the dismissal of a case for failure to timely file a required document or for failure to appear at the meeting of creditors be vacated must include as exhibits to the motion all of the documents that were

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, November 29, 2017

Hearing Room 303

11:00 AM

CONT...

Shannon L Harrell

Chapter 7

not timely filed and must be supported by a declaration under penalty of perjury establishing a sufficient explanation why the documents were not timely filed. The motion may be ruled on without further notice or hearing pursuant to LBR 9013-(1)(q).

Here, Debtor did not comply with the above rule and has not yet filed the missing second page of Form 122A-1. Given that Debtor has substantially complied with the filing requirements, and has not previously had any bankruptcy case dismissed, the Court is inclined to waive the requirements of Local Rule 1017-(2)(c).

TENTATIVE RULING

The Court is inclined to GRANT the motion conditioned on Debtor's filing of the second page of Form 122A-1 within fourteen days.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Shannon L Harrell	Pro Se
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Movant(s):

Shannon L Harrell	Pro Se
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Trustee(s):

Todd A. Frealy (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

11:00 AM

6:17-18497 Walter Roman

Chapter 7

#9.00 Motion to vacate dismissal

EH__

Docket 9

Tentative Ruling:

11/29/17

BACKGROUND

On October 12, 2017, Walter Roman ("Debtor") filed a skeletal Chapter 7 voluntary petition. Debtor had filed five previous bankruptcy since 2011, all of which were summarily dismissed. Debtor did not file the balance of the case commencement documents, and, on October 30, 2017, the case was dismissed.

On October 31, 2017, Debtor filed a motion to vacate dismissal and extend time to file schedules. Subsequently, on November 13, 2017, Debtor filed a Chapter 13 voluntary petition, case no. 17-bk-19406-MH.

DISCUSSION

Local Rule 1017-(2)(c) states:

Any motion requesting that the dismissal of a case for failure to timely file a required document or for failure to appear at the meeting of creditors be

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
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Wednesday, November 29, 2017

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11:00 AM

CONT...

Walter Roman

Chapter 7

vacated must include as exhibits to the motion all of the documents that were not timely filed and must be supported by a declaration under penalty of perjury establishing a sufficient explanation why the documents were not timely filed. The motion may be ruled on without further notice or hearing pursuant to LBR 9013-(1)(q).

Here, Debtor did not comply with the above rule. Nor has Debtor filed any of the required documents in the twenty-nine days since he filed the motion to vacate dismissal. For those reasons, and because of Debtor's previous bankruptcy filing history, the Court will not vacate the dismissal.

TENTATIVE RULING

The Court will DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Walter Roman

Pro Se

Movant(s):

Walter Roman

Pro Se

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

2:00 PM

6:17-12858 Scott Leigh Baumann

Chapter 7

Adv#: 6:17-01205 PRINGLE v. Rizzo et al

#10.00 Status Conference RE: [1] Adversary case 6:17-ap-01205. Complaint by JOHN P PRINGLE against Michael R Rizzo, Linda M Rizzo. (\$350.00 Charge To Estate). (Attachments: # 1 Adversary Coversheet) Nature of Suit: (14 (Recovery of money/property - other)),(13 (Recovery of money/property - 548 fraudulent transfer)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Pagay, Carmela)

EH__

Docket 1

*** VACATED *** REASON: CONTINUED TO 03/28/18 AT 2:00 PM

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scott Leigh Baumann

Represented By
Jenny L Doling

Defendant(s):

Michael R Rizzo

Pro Se

Linda M Rizzo

Pro Se

Joint Debtor(s):

Holly Lynn Baumann

Represented By
Jenny L Doling

Plaintiff(s):

JOHN P PRINGLE

Represented By
Carmela Pagay

Trustee(s):

John P Pringle (TR)

Represented By

**United States Bankruptcy Court
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2:00 PM

CONT...

Scott Leigh Baumann

Todd A Frealy
Carmela Pagay

Chapter 7

**United States Bankruptcy Court
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Wednesday, November 29, 2017

Hearing Room 303

2:00 PM

6:16-13091 Luz Ampelia Castro

Chapter 7

Adv#: 6:17-01003 Cisneros v. Castro, Jr.

#11.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01003. Complaint by Arturo M. Cisneros against Enrique Castro Jr.. (Charge To Estate). (Attachments: # 1 Adversary Coversheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer))
SETTLED

From: 3/8/17, 7/12/17, 10/25/17

EH__

Docket 1

***** VACATED *** REASON: CASE DISMISSED 11/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luz Ampelia Castro

Represented By
George P Hobson Jr

Defendant(s):

Enrique Castro Jr.

Represented By
C Scott Rudibaugh

Plaintiff(s):

Arturo M. Cisneros

Represented By
Carmela Pagay
Todd A Frealy

Trustee(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

2:00 PM

6:16-13311 Jose Antonio Hernandez

Chapter 7

Adv#: 6:16-01176 Simons v. Navarro

#12.00 CONT Status Conference RE: Complaint to Avoid and Recover Fraudulent Transfer

From: 9/7/16, 11/9/16, 1/11/17, 3/8/17, 4/12/17, 5/17/17, 6/7/17, 7/26/17, 9/27/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Antonio Hernandez

Represented By
Jessica De Anda Leon

Defendant(s):

Carolina Villalobos Navarro

Represented By
Christopher J Langley

Plaintiff(s):

Larry D Simons

Represented By
Frank X Ruggier

Trustee(s):

Larry D Simons (TR)

Represented By
Frank X Ruggier

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

2:00 PM

6:08-14592 Empire Land, LLC

Chapter 7

Adv#: 6:10-01319 DIAMOND v. Empire Partners, Inc., a California Corporation et

#13.00 Motion for Order Determining that Defendants have Consented to the Bankruptcy Court's Entry of a Final Order

EH__

Docket 424

***** VACATED *** REASON: HEARING ADVANCED TO 11/27/17 AT
1:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Empire Land, LLC

Represented By
James Stang
Robert M Saunders
Michael I Gottfried
----- O'melveny & Myers
Dean A Ziehl
Jonathan A Loeb
P Sabin Willett
Richard K Diamond (TR)
Jeffrey Rosenfeld

Defendant(s):

Empire Partners, Inc., a California

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

James P Previti

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

**United States Bankruptcy Court
Central District of California
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2:00 PM

CONT... Empire Land, LLC

Chapter 7

Larry Day

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

Neil M Miller

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

Paul Roman

Represented By
Jonathan A Loeb
Jeffrey Rosenfeld
P Sabin Willett

O'Melveny & Myers, LLP

Represented By
Howard Steinberg
P Sabin Willett

Peter T. Healy

Represented By
Howard Steinberg
P Sabin Willett

Movant(s):

RICHARD K DIAMOND

Represented By
Richard S Berger
Peter M Bransten
Michael I Gottfried
Aleksandra Zimonjic
Monica Rieder
Cynthia M Cohen
Roye Zur

Richard K Diamond (TR)

Represented By
Cynthia M Cohen
Michael I Gottfried
Peter M Bransten

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, November 29, 2017

Hearing Room 303

2:00 PM

CONT... Empire Land, LLC

Chapter 7

Plaintiff(s):

RICHARD K DIAMOND

Represented By

Richard S Berger

Peter M Bransten

Michael I Gottfried

Aleksandra Zimonjic

Monica Rieder

Cynthia M Cohen

Roye Zur

Trustee(s):

Richard K Diamond (TR)

Represented By

Michael I Gottfried

Richard S Berger

Rodger M Landau

Richard K Diamond

Peter M Bransten

Aleksandra Zimonjic

Monica Rieder

Lisa N Nobles

Peter J Gurfein

Paul Hastings

Roye Zur

Amy Evans

Best Best & Krieger

Franklin C Adams

Thomas J Eastmond

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, November 29, 2017

Hearing Room 303

2:00 PM

6:16-19799 Jaison Vally Surace

Chapter 7

#14.00 Chapter 7 Trustees Motion to Approve Compromise of Controversy with Setareh Abbasi, the Debtor Jaison Vally Surace, and Walie Qadir and Marym Qadir

EH__

Docket 36

Tentative Ruling:

11/29/2017

BACKGROUND

On November 2, 2016, Jaison Surace ("Debtor") filed a Chapter 7 voluntary petition. On December 15, 2016, Setareh Abbasi ("Plaintiff") filed a complaint against Debtor, and Walie & Marym Qadir (collectively, the "Qadirs") for: (1) determination that debt is non-dischargeable (523(a)(2) & (4)); (2) breach of contract; (3) quiet title; (4) cancellation of instrument based on voidable transfer; (5) false promise; (6) violation of Penal Code 496; (7) unjust enrichment; and (8) money had and received.¹ On March 27, 2017, Plaintiff filed an unsecured claim in the amount of \$311,564 ("Claim 17").

On November 7, 2017, the Trustee filed a motion to approve compromise. A brief summary of the factual background is necessary to understand the details of the settlement.

Prior to the petition date, Debtor owned certain real property located in Corona, California (the "Corona Property") and Lake Elsinore, California (the "Lake Elsinore Property"). In the year prior to the petition date, both the Corona Property and the Lake Elsinore Property were transferred to the Qadirs. In May 2016, however,

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Wednesday, November 29, 2017

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2:00 PM

CONT... **Jaison Vally Surace**

Chapter 7

Plaintiff failed a state court complaint against the Qadirs on the basis that Plaintiff had entered into an agreement with Debtor to purchase the Corona Property. The state court complaint was not resolved prior to Debtor's filing of bankruptcy.

Trustee, by adversary proceeding filed January 11, 2017, sought, and obtained, avoidance and recovery of the transfers of the Corona Property and Lake Elsinore Property. Trustee has indicated that he intends to market and sell both properties.

In August 2017, Plaintiff and the Qadirs went to mediation and reached a settlement of this adversary proceeding. The settlement provides that Claim 17 will be allowed as a secured claim in the amount of \$155,000 to be paid after sale of the Corona Property, that both Plaintiff and the Qadirs will cooperate with the sale of the Corona Property, and that Plaintiff, who is currently residing in the Corona Property, will be responsible for the homeowners' association dues and property taxes until the property is sold. The Trustee has estimated that the net proceeds to the estate for the sale of the Corona Property will be \$70,400 (after subtracting the payment to be made pursuant to this settlement agreement), and that the net proceeds to the estate after the sale of the Lake Elsinore Property will be \$369,400.

DISCUSSION

Fed. R. Bankr. P. Rule 9019(a) states: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct." The Court may grant approval if it determines that the compromise is "fair and equitable." *See In re Berkeley Delaware Court, LLC*, 834 F.3d 1036, 1039 (9th Cir. 2016). In determining whether the compromise is fair and equitable, the Court applies a four-factor test. *See In re DiCostanzo*, 399 Fed. Appx. 307, 308 (9th Cir. 2010). The test was originally outlined in *In re A & C Props.*, and provides for consideration of

- (a) The probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;

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CONT...

Jaison Vally Surace

Chapter 7

(d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

784 F.2d 1377, 1381 (9th Cir. 1986) (quotation omitted). "The bankruptcy court has great latitude in approving compromise agreements." *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988). Typically, "a compromise should be approved unless it falls below the lowest point in the range of reasonableness." *In re Art & Architecture Books of the 21st Century*, 2016 WL 1118742 at *25 (Bankr. C.D. Cal. 2016) (quotation omitted).

Regarding the first three factors, it would appear that Plaintiff and the Trustee are settling the dispute for approximately half of the amount claimed by Plaintiff, as reflected by Claim 17. A review of the complaint in the adversary proceeding reveals that this case is factually complicated and potentially involves significant evidence and events that occurred outside this country, specifically, in Afghanistan. Given the uncertainty and apparent complexity of the litigation, the Court finds that settling the claim for approximately half the amount claimed is reasonable. Regarding the final factor, the interests of creditors, Trustee has represented that unsecured creditors will be paid in full if both the Corona Property and Lake Elsinore Property are sold. Therefore, this factor also weighs in favor of approval.

TENTATIVE RULING

Notice being proper and no opposition having been filed, the Court will GRANT the motion approving the compromise.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Jaison Vally Surace

Represented By
Batkhand Zoljargal

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CONT... Jaison Vally Surace

Chapter 7

Movant(s):

John P Pringle (TR)

Represented By
Todd A Frealy
Carmela Pagay
Anthony A Friedman

Trustee(s):

John P Pringle (TR)

Represented By
Todd A Frealy
Carmela Pagay
Anthony A Friedman

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6:16-19799 Jaison Vally Surace

Chapter 7

Adv#: 6:16-01295 Abbasi v. Surace et al

#15.00 CONT Status Conference Re: Complaint by Setareh Abbasi, Bruce Dannemeyer, Jaison Vally Surace against Jaison Vally Surace, Walie Qadir, Marym Qadir. false pretenses, false representation, actual fraud, 67 - Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 13 - Recovery of money/property - 548 fraudulent transfer, 91 - Declaratory judgment, 02 - Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

From: 2/15/17, 5/17/17, 6/7/17, 10/25/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Defendant(s):

Jaison Vally Surace

Represented By
Batkhand Zoljargal

Walie Qadir

Represented By
Batkhand Zoljargal

Marym Qadir

Represented By
Batkhand Zoljargal

Plaintiff(s):

Setareh Abbasi

Represented By
Bruce Dannemeyer

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CONT... Jaison Vally Surace

Chapter 7

Bruce Dannemeyer

Trustee(s):

John P Pringle (TR)

Represented By

Todd A Frealy

Carmela Pagay

Anthony A Friedman

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3:00 PM

6:16-16720 Luevina Henry

Chapter 13

Adv#: 6:17-01187 Henry v. Real Time Resolutions Inc et al

#16.00 Motion for Disqualification for Cause Discrimination, Hate Crime (Black), etc., et al against Judge Meredith A. Jury

EH__

Docket 38

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luevina Henry

Represented By
Nancy Korompis

Defendant(s):

Real Time Resolutions Inc

Represented By
Renee M Parker

THE BANK OF NEW YORK

Represented By
Renee M Parker

Riverside County Sheriff

Represented By
Ronak N Patel

Riverside County Sheriff Stanley

Represented By
Ronak N Patel

Tavares

Pro Se

Rod Danielson

Pro Se

County Of Riverside

Represented By
Ronak N Patel

JPMorgan Chase Bank, N.A.

Represented By
Matthew S Henderson

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CONT... Luevina Henry

Chapter 13

Movant(s):

Luevina Henry Pro Se

Plaintiff(s):

Luevina Henry Pro Se

Trustee(s):

Rod (MJ) Danielson (TR) Pro Se

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6:16-19962 Fonda Cormier

Chapter 13

#1.00 Motion to vacate order Confirming Plan

EH__

Docket 70

Tentative Ruling:

11/30/2017

On November 9, 2016, Fonda Cormier ("Debtor") filed her petition for chapter 13 relief. Rod Danielson was the duly appointed chapter 13 trustee ("Trustee"). The Debtor's chapter 13 plan was confirmed on December 28, 2016.

On May 9, 2017, Trinity Financial Services LLC ("Trinity") filed a motion for relief from stay ("MFR"). An adequate protection order on the stipulation of the Debtor and Trinity was filed resolving the MFR on June 27, 2017. On June 30, 2017, the Debtor filed a notice to conversion and the Court converted the case on the same date pursuant to § 1307(a) ("Conversion Order").

On September 6, 2017, the Debtor filed a Motion to Vacate Order or to Reconvert to Original Chapter 13. The reconversion request was granted by the Court and the case reconverting the case to a case under chapter 13 was entered on October 6, 2017.

On October 27, 2017, Trinity filed its motion to vacate, in part, the order confirming plan (the "Motion"). Specifically, Trinity objects to receipt of payments via the Trustee through conduit payments and instead seeks an order permitting the Debtor to make direct payments.

DISCUSSION

The Court has reviewed the arguments by both sides regarding the applicability of conduit payments. The Court agrees with the Trustee that this case presents a situation where conduit payments were appropriate given the extent of Debtor's history of nonpayment to Trinity based on the filed proof of claim. The Court does not find that the Trustee's recommendation to require conduit payments

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CONT... Fonda Cormier

Chapter 13

was adverse to Trinity based on the history of nonpayment. At this point, however, given that Trinity has asserted that direct payments are in its best interest - whether because their accounting system is not able to track conduit payments or because, as Trinity indicates it may want to take a less aggressive tack with respect to delinquent payments – the Court finds that a request by Trinity to receive direct payments going forward is justified.

TENTATIVE RULING

The Court is not inclined to vacate the confirmation – which would purportedly have a retroactive effect. Instead, it appears more appropriate to construe the instant motion as a motion to modify and modify the confirmation order such that payments to Trinity shall be paid directly by the Debtor on a prospective basis.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Fonda Cormier

Represented By
Manfred Schroer

Movant(s):

Trinity Financial Services LLC

Represented By
Henry D Paloci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-11261 Ernie Macias

Chapter 13

#2.00 Order to show cause why Alon Darvish should not be held in contempt of court pursuant to 11 U.S.C. Sect 105 and Federal Rule of Bankruptcy Procedure 9020

EH__

Docket 0

Tentative Ruling:

11/30/17

BACKGROUND

On February 21, 2017, Ernie Macias ("Debtor") filed his petition for chapter 13 relief. The Debtor's case was filed by Alon Darvish ("Darvish"). On March 13, 2017, the Debtor's case was dismissed for failure to file information.

On March 24, 2017, the Office of the United States Trustee ("UST") filed a Motion to Disgorge Attorney's Fees ("Disgorgement Motion"). On June 13, 2017, the Court granted in part and denied in part the UST's Disgorgement Motion (the "Disgorgement Order"). The Disgorgement Order required Darvish to file his disclosure of compensation, and to disgorge fees received from the Debtor back to him.

On September 20, 2017, the UST filed its Motion For An Order To Show Cause Why Alon Darvish Should Not Be Held In Contempt Of Court Pursuant To 11 U.S.C. § 105 And Federal Rule Of Bankruptcy Procedure 9020 (the "Motion for OSC"). The Motion for OSC specifically asserted that Darvish had failed to comply with any part of the Disgorgement Order. The UST's Motion for OSC further asserted that Darvish had repeatedly failed to disclose compensation and had been sanctioned for such conduct under similar circumstances in at least 6 other cases. (Motion for OSC at 9).

On October 20, 2017, the Court granted the Motion for OSC and ordered Darvish to show cause why he should not be held in contempt (the "OSC"). Darvish filed his response to the OSC on November 16, 2017 ("Response"). On November 21, 2017, the UST replied to the Response.

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CONT... Ernie Macias

Chapter 13

DISCUSSION

In his Response, Darvish indicated that his practice includes the filing of skeletal petitions for chapter 13 debtors for the purpose of stopping foreclosures. He indicated that when such skeletal petitions are filed, his software does not file the Disclosure of Compensation. Darvish asserts that he is a solo practitioner who is overwhelmed and understaffed and who is trying to rectify the issues in his practice. In Reply, the UST objects particularly to Darvish's failure to outline specific steps he intends to take to remedy the issues at his firm. The UST is also concerned that Darvish has essentially admitted that his practice includes the filing of abusive petitions intended solely to avoid foreclosures. The UST requests that the Court continue the matter for Darvish to set forth specific remedial actions as ordered. The UST also requests that the Court separately consider whether a separate order to show cause is justified based on Darvish's inherently abusive prevention practice.

TENTATIVE RULING

The Court agrees with the UST that Darvish's explanation is insufficient. Darvish's Response indicates clearly the reason for the failure to file disclosure of compensation forms. Despite this fact, he does not explain the ongoing failure to file these forms, particularly where he has previously been sanctioned for failing to disclose his compensation. The ongoing failure to file required documents, despite having already been sanctioned, supports the UST's request for a specific plan of remediation. Absent such plan, Darvish may simply continue to rely on his thus far unreliable bankruptcy filing software.

Separately, the UST's concern regarding Darvish's practice of filing skeletal petitions is well-taken. In particular, if Darvish is advising his clients to file abusive petitions to delay foreclosure, such conduct may warrant further sanctions/discipline.

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CONT... Ernie Macias

Chapter 13

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Ernie Macias

Represented By
Alon Darvish

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17420 Jeffrey Elkins

Chapter 13

#3.00 Motion to vacate dismissal

EH__

Docket 30

Tentative Ruling:

11/30/2017

DISCUSSION

On September 2, 2017 ("Petition Date"), Jeffrey Elkins ("Debtor") filed his petition for chapter 13 relief. Rod Danielson is the duly appointed chapter 13 trustee ("Trustee"). The Debtor's petition was initially filed as incomplete. As such, the Docket reflects that a Case Commencement Deficiency Notice was issued on the Petition Date indicating "YOUR CASE MAY BE DISMISSED IF YOU FAIL TO CURE THE FOLLOWING DEFICIENCIES." Among the documents indicated was the Declaration regarding income received within 60 days of the Petition Date pursuant to 11 U.S.C. § 521(a)(1)(B)(iv). (Docket 1-2). The deadline to file the deficient documents was September 18, 2017. On September 11, 2017, the Debtor filed the § 521 declaration but incorrectly attached the pay advices for Megan Elkins, and not for the Debtor.

On October 23, 2017, the case was dismissed for failure of the Debtor to file the pay advices required pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).

On October 26, 2017, the Debtor filed a motion to vacate the dismissal ("Motion") and on the same date filed the Debtor's pay advice. On October 27, 2017, the Trustee filed comments indicating his conditional approval of the Motion. Specifically, the Trustee recommended approval on the following conditions:

1. Due process (i.e. notice) to all creditors pursuant to LBR 9013-1; and
2. Debtor must be able to certify that he is holding all outstanding plan payments at the time of the hearing to be tendered to the Trustee on entry of the order granting the Motion.

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CONT... Jeffrey Elkins

Chapter 13

TENTATIVE RULING

Finding service proper, the Court is inclined to GRANT the Motion on the Trustee's conditions.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jeffrey Elkins

Represented By
Anthony P Cara

Movant(s):

Jeffrey Elkins

Represented By
Anthony P Cara

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-17861 Arturo Olvera

Chapter 13

#4.00 CONT Confirmation of Chapter 13 Plan

From: 10/26/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arturo Olvera

Represented By
William Radcliffe

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18131 Ramon Gabriel Alvarez

Chapter 13

#5.00 CONT Confirmation of Chapter 13 Plan

From: 11/2/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ramon Gabriel Alvarez

Represented By
Devin Sawdayi

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18210 Jorge Manuel Azmitia and Yoshiko Azmitia

Chapter 13

#6.00 CONT Confirmation of Chapter 13 Plan

From: 11/2/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jorge Manuel Azmitia

Represented By
Nicholas M Wajda

Joint Debtor(s):

Yoshiko Azmitia

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18230 Ricardo Munoz and Roseann Munoz

Chapter 13

#7.00 CONT Confirmation of Chapter 13 Plan

From: 11/9/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricardo Munoz

Represented By
Michael E Clark

Joint Debtor(s):

Roseann Munoz

Represented By
Michael E Clark

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18258 Francisco R Tamayo

Chapter 13

#8.00 CONT Confirmation of Chapter 13 Plan

From: 11/9/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Francisco R Tamayo

Represented By
Alla Tenina

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18316 Julio C. Davila

Chapter 13

#9.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julio C. Davila

Represented By
Michael Jay Berger

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18535 Manuel Mayorga and Teodora Mayorga

Chapter 13

#10.00 CONT Confirmation of Chapter 13 Plan

From: 11/16/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Mayorga

Represented By
Curtis R Aijala

Joint Debtor(s):

Teodora Mayorga

Represented By
Curtis R Aijala

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18595 Gregory O. Ouma

Chapter 13

#11.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gregory O. Ouma

Represented By
James D. Hornbuckle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18643 Daniel Robert Shapiro

Chapter 13

#12.00 Motion to Avoid Lien JUNIOR LIEN with Bank of America NA and Mortgage Electronic Registration Systems Inc

Also #13

EH__

Docket 23

Tentative Ruling:

11/30/2017

Summary of the Motion:

Notice: Proper

Opposition: None

Address: 5610 Felspar St, Jurupa Valley, CA 92509

First trust deed: \$425,945.79 with Fannie Mae (Ex. A)

Second trust deed (to be avoided): \$101,233.57 with BOFA (Ex. B)

Fair market value: \$395,000 (Declaration of Debtor)

TENTATIVE

Based on the Debtor's evidence of value of the Property, which supports the Debtor's request to avoid the junior lien on the Property, the Court is inclined to GRANT upon receipt of a chapter 13 discharge.

APPEARANCE IS WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued to the next Chapter 13 calendar.

PREVAILING PARTY SHOULD SUBMIT THE FORM ORDER WITHIN 7 DAYS, A BLANK COPY OF WHICH MAY BE DOWNLOADED FROM THE FORMS SECTION ON THE COURT'S WEBSITE.

Party Information

Debtor(s):

Daniel Robert Shapiro

Pro Se

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CONT... Daniel Robert Shapiro

Chapter 13

Movant(s):

Daniel Robert Shapiro

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18643 Daniel Robert Shapiro

Chapter 13

#13.00 Confirmation of Chapter 13 Plan

Also #12

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Robert Shapiro

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18653 Martha Mata

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martha Mata

Represented By
Inez Tinoco-Vaca

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18697 Jacqueline Hurtado

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 11/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jacqueline Hurtado

Represented By
Rhonda Walker

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18704 Rafael Alvarado

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 11/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rafael Alvarado

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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6:17-18705 Sergio Alvarez

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 11/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sergio Alvarez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18718 Michael Phillip Young

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 11/6/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Phillip Young

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18720 Patricia Morales

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricia Morales

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18777 Josephine Theobald

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Josephine Theobald

Represented By
Emilia N McAfee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18780 Jules Andre Nelson

Chapter 13

#21.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jules Andre Nelson

Represented By
Emilia N McAfee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

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6:17-18786 Edgar Raymond Domingue, Sr.

Chapter 13

#22.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edgar Raymond Domingue Sr.

Represented By
Gregory M Shanfeld

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:30 PM

6:17-18792 Roman Negrete Manriquez

Chapter 13

#23.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roman Negrete Manriquez

Represented By
Patricia A Mireles

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:30 PM

6:17-18799 Michelle Crain

Chapter 13

#24.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michelle Crain

Represented By
Roland D Tweed

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:30 PM

6:17-18813 Virginia Fonseca and Jesus Fonseca, III

Chapter 13

#25.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Virginia Fonseca

Represented By
Andy C Warshaw

Joint Debtor(s):

Jesus Fonseca III

Represented By
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:30 PM

6:17-18842 Eva Quintero Martinez

Chapter 13

#26.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 11/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eva Quintero Martinez

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:30 PM

6:17-18844 Jonathan Siqueiros

Chapter 13

#27.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 11/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jonathan Siqueiros

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:30 PM

6:17-18872 Rafeek Nehman Hamada

Chapter 13

#28.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rafeek Nehman Hamada

Represented By
Eric Bensamochan

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:30 PM

6:17-18877 Fernando Macias Perez

Chapter 13

#29.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fernando Macias Perez

Represented By
Edgar P Lombera

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:30 PM

6:17-18979 Gilbert Richard Enriquez and Lisa Lynn Enriquez

Chapter 13

#30.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gilbert Richard Enriquez

Represented By
Raj T Wadhvani

Joint Debtor(s):

Lisa Lynn Enriquez

Represented By
Raj T Wadhvani

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:30 PM

6:17-18982 Maisha Tamu Mesa

Chapter 13

#31.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maisha Tamu Mesa

Pro Se

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:30 PM

6:17-19281 Anthony J McPike

Chapter 13

#32.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate debtors residence 39764 Chambray Dr, Murrieta CA 92563 and vehicle 2014 Toyota Avalon

MOVANT: ANTHONY J MCPIKE

EH__

Docket 11

Tentative Ruling:

11/30/2017

The Motion seeks to continue the stay as to all creditors. However, the proof of service appears to indicate that only the secured creditors were served with the Motion.

1. The Court finds that service on Toyota was not proper. Rule 7004 requires service to the attention of an officer. Although Debtor employed a PO Box indicated in a proof of claim filed in a prior case, the creditor has not yet made an appearance in the instant case and must thus be served at its corporate office to the attention of an officer.
2. Service on Carrington Mortgage Services is not proper. Carrington should have been served per FRBP 7004 at its address as indicated on the California Secretary of State Website. That address is in Anaheim, CA. Instead, Carrington was served at a PO Box indicated on correspondence it sent to the Debtor prepetition. Additionally, the Service List does not reflect service on Carrington to the attention of an officer.
3. The California Secretary of State Website indicates an address for Bungalows at Old School House Association in Murrieta, CA. Service on Bungalows is also improper.

As to the merits, the Debtor has explained why it did not have sufficient funds to tender a plan payment on the date of the confirmation hearing. However, the Debtor's

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Thursday, November 30, 2017

Hearing Room 303

12:30 PM

CONT... Anthony J McPike

Chapter 13

Motion does not indicate why the Debtor was late on his October postpetition mortgage payment. The postpetition mortgage delinquency was a second basis for dismissal of the case at the confirmation hearing.

Nor has Debtor named any of the secured creditors in the caption of the notice.

Regardless of the merits, failure to give notice per Rule 7004 is fatal, and there is an insufficient notice period remaining to continue the hearing. On that basis, the Court's tentative ruling is to DENY the Motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Anthony J McPike

Represented By
Dana Travis

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:31 PM

6:13-13116 Juana Judith Mejia

Chapter 13

#33.00 Trustee's Motion to Dismiss Case

EH__

Docket 117

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juana Judith Mejia

Represented By
Javier H Castillo

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:31 PM

6:14-12693 Silvia Vargas

Chapter 13

#34.00 Trustee's Motion to Dismiss Case

EH__

Docket 94

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Silvia Vargas

Represented By
Matthew D Resnik
S Renee Sawyer Blume

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:31 PM

6:14-23388 Jose N Recinos and Patricia Recinos

Chapter 13

#35.00 CONT Trustee's Motion to Dismiss Case

From: 11/9/17

EH__

Docket 245

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose N Recinos

Represented By
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Patricia Recinos

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:31 PM

6:14-24807 Bryan K. Harrison and Dawn Harrison

Chapter 13

#36.00 CONT Trustee's Motion to Dismiss Case

From: 10/26/17

EH__

Docket 98

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bryan K. Harrison

Represented By
April E Roberts

Joint Debtor(s):

Dawn Harrison

Represented By
April E Roberts

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:31 PM

6:15-15522 Scott Allan Oswald and Lisa Frances Oswald

Chapter 13

#37.00 CONT Trustee's Motion to Dismiss Case

From: 11/13/17

EH__

Docket 66

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scott Allan Oswald

Represented By
Richard Lynn Barrett

Joint Debtor(s):

Lisa Frances Oswald

Represented By
Richard Lynn Barrett

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:31 PM

6:16-18546 Alexis I Barahona

Chapter 13

#38.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 11/13/17

EH__

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alexis I Barahona

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:31 PM

6:16-18990 John D Castro, Jr and Jennifer Manda Castro

Chapter 13

#39.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 11/13/17

EH__

Docket 34

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/21/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John D Castro Jr

Represented By
Chris A Mullen

Joint Debtor(s):

Jennifer Manda Castro

Represented By
Chris A Mullen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:31 PM

6:16-20329 Gabriel Cruz

Chapter 13

#40.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 8/31/17, 10/5/17

EH__

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gabriel Cruz

Represented By
Christopher J Langley

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:31 PM

6:17-13526 Howard Lamar Sanders and Jenique B. Sanders

Chapter 13

#41.00 Trustee's Motion to Dismiss Case

EH__

Docket 25

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Howard Lamar Sanders

Represented By
D Justin Harelik

Joint Debtor(s):

Jenique B. Sanders

Represented By
D Justin Harelik

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:31 PM

6:17-15102 Gwendolyn Washington

Chapter 13

#42.00 Trustee's Motion to Dismiss Case

EH__

Docket 36

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gwendolyn Washington

Represented By
Julie J Villalobos

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:31 PM

6:17-15604 Mandy Catron

Chapter 13

#43.00 CONT Trustee's Motion to Dismiss Case

From: 11/16/17

EH__

Docket 20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mandy Catron

Represented By
Stephen S Smyth

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:31 PM

6:17-15959 Maria Artemisa Griffith

Chapter 13

#44.00 Trustee's Motion to Dismiss Case

EH__

Docket 31

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Artemisa Griffith

Represented By
Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:31 PM

6:16-11872 Garan Bales

Chapter 13

#45.00 Trustee's Motion to Dismiss Case

EH__

Docket 102

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Garan Bales

Represented By
Amanda G Billyard
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, November 30, 2017

Hearing Room 303

12:31 PM

6:16-12014 Jennifer Mae White

Chapter 13

#46.00 Trustee's Motion to Dismiss Case

EH__

Docket 40

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jennifer Mae White

Represented By
Steven A Alpert

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, December 04, 2017

Hearing Room 303

10:00 AM

6:17-11053 Rio Rancho Super Mall LLC

Chapter 11

**#1.00 CONT Disclosure Statement hearing
HOLDING DATE**

From: 7/25/17, 8/22/17, 10/18/17

Also #2 & #3

EH__

Docket 88

Party Information

Debtor(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, December 04, 2017

Hearing Room 303

10:00 AM

6:17-11053 Rio Rancho Super Mall LLC

Chapter 11

#2.00 CONT Order (1) Setting Scheduling Hearing And Case Management
Conference And (2) Requiring Status Report

From: 3/28/17, 5/30/17, 7/25/17, 8/22/17, 10/18/17

Also #1 & #3

EH__

Docket 6

Party Information

Debtor(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Monday, December 04, 2017

Hearing Room 303

10:00 AM

6:17-11053 Rio Rancho Super Mall LLC

Chapter 11

#3.00 CONT Evidentiary Hearing re Motion for Valuation of Security Interest in Real Property

From: 10/18/17

Also #1 & #2

EH__

Docket 80

Party Information

Debtor(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

Movant(s):

Rio Rancho Super Mall LLC

Represented By
Christopher J Langley
Steven P Chang

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

6:13-30641 Jacob J Cannon and Danielle M Cannon

Chapter 13

#1.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 761 Glendenning Way, San Bernardino, CA 92404

MOVANT: NATIONSTAR MORTGAGE LLC

From: 10/24/17

EH__

Docket 86

***** VACATED *** REASON: ORDER ENTERED 11/20/17**

Tentative Ruling:

10/24/2017

Service is Proper
Opposition: Limited

Subject to discuss from the parties regarding an adequate protection order, the Court is inclined to GRANT relief from stay pursuant to § 362(d)(1). GRANT waiver of 4001 (a)(3) stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under ¶ 13 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jacob J Cannon

Represented By
Lisa H Robinson
John F Brady

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

CONT... Jacob J Cannon and Danielle M Cannon

Chapter 13

Joint Debtor(s):

Danielle M Cannon

Represented By
Lisa H Robinson
John F Brady

Movant(s):

NATIONSTAR MORTGAGE LLC

Represented By
Andrew Kussmaul
Alexander K Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

6:15-13354 Jeffrey Michael Berger and Debra Lynn Berger

Chapter 13

#2.00 CONT Motion for relief from the automatic stay with supporting declarations
REAL PROPERTY RE: 30820 Via Las Palmas, Thousand Palms CA 92276

MOVANT: DITECH FINANCIAL LLC

From: 10/3/17, 11/7/17

EH__

Docket 67

*** VACATED *** REASON: ORDER GRANTING STIPULATION
ENTERED 12/4/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jeffrey Michael Berger

Represented By
Jenny L Doling

Joint Debtor(s):

Debra Lynn Berger

Represented By
Jenny L Doling

Movant(s):

DITECH FINANCIAL LLC

Represented By
Natalie E Lea
Jamie D Hanawalt

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

6:15-20023 Zachary Lee Nowak

Chapter 13

#3.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 44984 Hawthorn Street, Temecula, California 92592

MOVANT: WELLS FARGO BANK, N.A.

From: 10/3/17, 11/7/17

EH__

Docket 60

***** VACATED *** REASON: ORDER ENTERED 11/17/17**

Tentative Ruling:

10/03/2017

Service is Proper
Opposition: Limited

Subject to discussion from the parties regarding adequate protection, the Court is inclined to GRANT the motion based on the post-confirmation defaults.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Zachary Lee Nowak

Represented By
John F Brady

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Alexander K Lee

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

6:15-20062 Lilia Iveth Fong

Chapter 13

#4.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1345 N Fillmore Ave, Rialto, California 92376-3173

MOVANT: WELLS FARGO BANK, N.A.

From: 11/7/17

EH__

Docket 44

Tentative Ruling:

11/07/2017

Service: Proper

Opposition: Yes, filed 10/11

Parties to indicate whether they have reached agreement regarding the terms of an APO.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Lilia Iveth Fong

Represented By
John F Brady

Movant(s):

Wells Fargo Bank N.A.

Represented By
Vanessa A Cole
Bruce E Brown
Senique Moore
Deborah L Rothschild
Alexander K Lee

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

CONT... Lilia Iveth Fong

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

6:16-11635 Sam Daniel Dason and Greeta Sam Dason

Chapter 7

#5.00 Motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: State Court Judgment

MOVANT: JUDDY OLIVARES

EH__

Docket 148

Tentative Ruling:

12/5/17

On January 24, 2013, Juddy Olivares ("Olivares") filed state court litigation against Sam Dason ("Debtor") and his dental practice. Trial was held on February 25, 2016, and Olivares obtained judgment against Debtor and his dental practice. On February 26, 2016, three material events occurred: (1) the state court signed the proposed judgment; (2) Debtor filed bankruptcy; and (3) the state court docketed the proposed judgment. The evidence indicates that Debtor filed bankruptcy at 12:23 p.m. and that the state court judgment was docketed at 2:43 p.m. It is unclear when the state court judgment was signed, but, clearly it was signed prior to the judgment being docketed.

On August 22, 2016, Olivares filed an adversary complaint against Debtor and his dental practice for non-dischargeability under § 523(a)(6).

On November 14, 2017, Olivares filed a motion for relief from the automatic stay. Olivares appears to request an order holding that that the entry of judgment by the state court was merely a ministerial act, or, in the alternative, an order annulling the automatic stay, or, in the alternative, relief from the automatic stay to, presumably, obtain a new judgment. On November 20, 2017, Debtor filed his opposition to the

**United States Bankruptcy Court
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Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

CONT... Sam Daniel Dason and Greeta Sam Dason

Chapter 7

motion as well as evidentiary objections. The following day, Debtor filed an amended opposition to the automatic stay. Debtor argues that annulment of the automatic stay is not warranted, and that there is no cause for relief from the automatic stay because the state court judgment will not be preclusive on Olivares's adversary proceeding.

Olivares cites *In re Pettit* for the proposition that ministerial acts do not violate the automatic stay. 217 F.3d 1072, 1080 (9th Cir. 2000) ("We now adopt the ministerial act exception for this circuit and apply it the case before us."). While the Court acknowledges that there is a ministerial act exception, it is less than clear that this exception applies to the case at hand. *Pettit* states: "Applying the logic of the exception, the judicial proceeding in this case ended once Judge Illston signed the order to release the funds. The clerk of the court had no discretion as to whether to issue the check to the Trust Funds and her act was, therefore, purely ministerial." *Id.* Therefore, while *Pettit* concluded that various administrative actions taken after the signing of the order were ministerial, it is implied that the signing of the order itself was not ministerial. As *Pettit* stated: "Ministerial acts or automatic occurrences that entail no deliberation, discretion, or judicial involvement do not constitute continuations of such a proceeding." *Id.* The signing of the judgment, however, does entail deliberation, discretion, and judicial involvement. Therefore, the signing of the order is not a ministerial act.

Debtor has not provided adequate evidence establishing that the judgment was signed prior to Debtor's filing of bankruptcy. Debtor provides a transcript of the state court hearing which includes the following:

The Court: All right. Prepare everything for the Court's signature.

Mr. Panitz: I will do that. And if I submit it overnight, will the Court sign and enter it first thing in the morning?

The Court: Sure.

This evidence simply does not establish that the state court judgment was, in fact, signed before 12:23 p.m. In the absence of evidence establishing that the state court judgment was in fact signed before 12:23 p.m., Olivares cannot establish that the ministerial act exception applies.¹

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

CONT... Sam Daniel Dason and Greeta Sam Dason

Chapter 7

Olivares alternatively argues that grounds exist for the Court to annul the automatic stay. In determining whether cause exists to retroactively annul the automatic stay, this Court looks to the equities and the *Fjelsted* factors:

Determining whether cause exists to annul the stay is a case-by-case inquiry based on a balance of the equities. In conducting this inquiry the bankruptcy court, among other factors, should consider whether the creditor knew of the bankruptcy when violating the stay and whether the debtor's conduct was unreasonable, inequitable or prejudicial to the creditor.

In *Fjelsted*, we approved additional factors for consideration in assessing the equities. The twelve nonexclusive factors are: (1) number of filings; (2) whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors; (3) a weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser; (4) the debtor's overall good faith (totality of circumstances test); (5) whether creditors knew of stay but nonetheless took action, thus compounding the problem; (6) whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules; (7) the relative ease of restoring parties to the status quo ante; (8) the costs of annulment to debtors and creditors; (9) how quickly creditors moved for annulment, or how quickly debtor moved to set aside the sale or violative conduct; (10) whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief; (11) whether annulment of the stay will cause irreparable injury to the debtor; and (12) whether stay relief will promote judicial economy or other efficiencies. The Panel in *Fjelsted* cautioned that the twelve factors are merely a framework for analysis and not a scorecard, and that in any given case, one factor may so outweigh the others as to be dispositive.

In re Estavan Capital LLC, 2015 WL 7758494 at *5 (B.A.P. 9th Cir. 2015) (citations and quotations omitted).

**United States Bankruptcy Court
Central District of California
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Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

CONT... **Sam Daniel Dason and Greeta Sam Dason**

Chapter 7

As noted in the first paragraph of the above excerpt, the two most prominent factors considered by the Court are the good faith of the party violating the automatic stay, and the good faith of the debtor. Here, the party that potentially violated the automatic stay was the state court – and we can presume that the state court did not have notice of the automatic stay when the violation occurred. Furthermore, the timing of the filing of Debtor’s bankruptcy petition, which was filed after trial was concluded but before judgment was docketed, is clearly "unreasonable, inequitable or prejudicial to the creditor."

The totality of the circumstances here are strongly in favor of granting annulment: the violation of the automatic stay, if any, was done by the state court, a party whose good faith can be presumed, while the timing of Debtor’s filing indicates that the bankruptcy petition was clearly intended to frustrate the collection efforts of Olivares. Furthermore, given the status of the state court proceedings at the time of the bankruptcy filing (post-trial), and the nature of the underlying suit (non-bankruptcy related), Olivares has clearly established cause for relief from the automatic stay distinct from demonstrating cause for annulment. Requiring Olivares to return to state court to obtain a new signed judgment is a grossly inefficient use of judicial resources.

Therefore, the Court is inclined to GRANT annulment of the automatic stay and waiver of the 4001(a)(3) stay and DENY request under ¶ 2 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Sam Daniel Dason

Represented By
Robert G Uriarte

Joint Debtor(s):

Greeta Sam Dason

Represented By
Robert G Uriarte

Movant(s):

Juddy Olivares

Represented By
Lazaro E Fernandez

**United States Bankruptcy Court
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10:00 AM

CONT... Sam Daniel Dason and Greeta Sam Dason

Chapter 7

Charity J Miller
Robert P Goe

Trustee(s):

Lynda T. Bui (TR)

Represented By
Brett Ramsaur

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

6:16-20874 Irma Hernandez

Chapter 13

#6.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 14352 La Brisa Road, Victorville, CA 92392

MOVANT: U.S. BANK N.A.

EH__

Docket 32

Tentative Ruling:

12/5/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under ¶ 13 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Irma Hernandez

Represented By
David T Egli

Movant(s):

U.S. Bank N.A., as trustee, on behalf

Represented By
Daniel K Fujimoto
Caren J Castle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

6:17-13649 Fernando Fabrigas, Sr. and Estela F. Fabrigas

Chapter 7

#7.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2016 BMW 3 Series Sedan 4D 320i I4 Turbo

MOVANT: BMW BANK OF NORTH AMERICA

EH__

Docket 51

Tentative Ruling:

12/5/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Fernando Fabrigas Sr.

Represented By
R Creig Greaves

Joint Debtor(s):

Estela F. Fabrigas

Represented By
R Creig Greaves

Movant(s):

BMW Bank of North America

Represented By
Zann R Welch
Bret D. Allen

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10:00 AM

CONT... Fernando Fabrigas, Sr. and Estela F. Fabrigas

Chapter 7

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Brandon J Iskander

**United States Bankruptcy Court
Central District of California
Riverside
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Hearing Room 303

10:00 AM

6:17-16257 Maria Armina Policarpio Trinidad

Chapter 7

#8.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 17441 Ludlow Street, Granada Hills, CA 91344

MOVANT: U.S. BANK NATIONAL ASSOCIATION

EH__

Docket 24

Tentative Ruling:

12/5/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT relief pursuant to § 362(d)(4) based on multiple bankruptcy filings and multiple unauthorized transfers. GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 10. DENY request under ¶ 11 for lack of cause shown. DENY request under ¶ 14 as moot.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Maria Armina Policarpio Trinidad Pro Se

Movant(s):

U.S. Bank National Association, as Represented By
 Angie M Marth

Trustee(s):

Charles W Daff (TR) Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

10:00 AM

6:17-16923 Jaelyn Roylene Young

Chapter 13

#9.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1156 Sheila Court, Upland, CA 91784-1563

MOVANT: HSBC BANK USA NATIONAL ASSOCIATION

EH__

Docket 33

Tentative Ruling:

12/5/2017

Service is Proper
Opposition: Yes

Debtor to confirm she is current and parties to discuss adequate protection.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jaelyn Roylene Young

Represented By
Christopher J Langley

Movant(s):

HSBC Bank USA, National

Represented By
Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

6:17-16964 Tabatha Reece

Chapter 7

#10.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2006 PONTIAC SOLSTICE, VIN 1G2MB33B26Y109178

MOVANT: AMERICREDIT FINANCIAL SERVICES, INC.

EH__

Docket 17

Tentative Ruling:

12/5/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Tabatha Reece

Represented By
Patricia M Ashcraft

Movant(s):

Americredit Financial Services, Inc.,

Represented By
Sheryl K Ith

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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Hearing Room 303

10:00 AM

6:17-18044 Elena Navarro Arriaga

Chapter 7

#11.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 151 East South St #A, Rialto, CA 92376

MOVANT: WELLS FARGO BANK NA

EH__

Docket 15

Tentative Ruling:

12/5/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Elena Navarro Arriaga

Represented By
Gary S Saunders

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Armin M Kolenovic

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

6:17-18354 Joshua Anthony Beltran and Mabel Paz Beltran

Chapter 7

#12.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2011 Toyota Tundra

MOVANT: TOYOTA MOTOR CREDIT CORPORATION

EH__

Docket 14

Tentative Ruling:

12/5/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Joshua Anthony Beltran

Represented By
Neil R Hedtke

Joint Debtor(s):

Mabel Paz Beltran

Represented By
Neil R Hedtke

Movant(s):

Toyota Motor Credit Corporation

Represented By
Robert S Lampl

**United States Bankruptcy Court
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10:00 AM

CONT... Joshua Anthony Beltran and Mabel Paz Beltran

Chapter 7

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

10:00 AM

6:17-18363 Yvette Arzate

Chapter 7

#13.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 CHEVROLET TRUCK Silverado 1500 Crew Cab LT 2WD

MOVANT: BMW FINANCIAL SERVICES NA, LLC

EH__

Docket 10

Tentative Ruling:

12/5/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Yvette Arzate

Represented By
Timothy W Combs

Movant(s):

BMW Financial Services NA, LLC

Represented By
Bret D. Allen
Alka Pawar

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

10:00 AM

6:17-18854 Jose C. Ollarsaba

Chapter 7

#14.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Nissan Versa, VIN: 3N1CN7AP1FL802753

MOVANT: AMERICREDIT FINANCIAL SERVICES, INC.

EH__

Docket 8

Tentative Ruling:

12/5/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Jose C. Ollarsaba

Represented By
Christopher J Langley

Movant(s):

AmeriCredit Financial Services, Inc.

Represented By
Sheryl K Ith

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

6:17-19253 Arnel L Ganzon

Chapter 13

#15.00 Motion in Individual Case for Order Confirming Termination of Stay under 11 U.S.C. 362(j) or That No Stay is in Effect under 11 U.S.C. 362(c)(4)(A)(ii)

MOVANT: WELLS FARGO BANK NA

EH__

Docket 7

Tentative Ruling:

12/5/2017

Service is Proper
Opposition: None

Debtors had two bankruptcy cases dismissed in the year prior to filing the instant case. The first case was dismissed on June 26, 2017, for failure to file case commencement documents. The second case was dismissed on October 23, 2017, for failure to file case commencement documents. This case was dismissed on November 27, 2017, for failure to file case commencement documents.

11 U.S.C. § 362(c)(4)(A)(ii) provides that if a debtor had two previous cases dismissed within a year of the instant case, then, absent court order, the automatic stay does not go into effect. Here, the Court did not impose the automatic stay, and, therefore, the automatic stay was never effective in this case. Therefore, the Court is inclined to GRANT the motion.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

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10:00 AM

CONT... Arnel L Ganzon

Chapter 13

Debtor(s):

Arnel L Ganzon

Pro Se

Movant(s):

WELLS FARGO BANK, N.A.

Represented By
Dane W Exnowski

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

6:17-19443 Kai Kyung Dong Lee

Chapter 7

#16.00 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 5051 Juneau Ct., Rancho Cucamonga, CA 91737

MOVANT: ANDY CHOU

EH__

Docket 7

Tentative Ruling:

12/5/2017

Service is Improper

Opposition: Yes

This matter was set on shortened notice pursuant to the Court's self-scheduling procedures. The self-scheduling procedures require that telephonic notice be provided at least five court days prior to the hearing, and that proof of telephonic notice be filed at least three court days prior to the hearing. Here, rather than file a separate declaration of telephonic notice, Movant has indicated on its proof of service that telephonic notice was provided to Debtor. Movant has listed an incorrect phone number, however, and, therefore, it is unclear whether effective telephonic notice was provided. Movant further indicated on the proof of service that telephonic notice was given on February 21, 2017, which is clearly incorrect. The Court is inclined to CONTINUE the matter for proper service on Debtor.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Kai Kyung Dong Lee

Pro Se

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

CONT... Kai Kyung Dong Lee

Chapter 7

Movant(s):

Andy Chou

Represented By
Luke P Daniels

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, December 05, 2017

Hearing Room 303

10:00 AM

6:17-19614 Alfredo Manzo Arrieta and Mayte Hernandez- Arrieta

Chapter 13

#17.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 4057 E Hamilton Paseo, Ontario, CA 91761

MOVANT: ALFREDO MANZO ARRIETA AND MAYTE HERNANDEZ-ARRIETA

EH__

Docket 13

Tentative Ruling:

12/05/2017

Service: Proper
Opposition: None

The Court having reviewed the motion, and Debtor having presented clear and convincing evidence sufficient to rebut the presumption that the case was not filed in good faith, the Court is inclined to GRANT the motion, CONTINUING the automatic stay as to Wells Fargo.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Alfredo Manzo Arrieta

Represented By
Andy C Warsaw

Joint Debtor(s):

Mayte Hernandez- Arrieta

Represented By
Andy C Warsaw

Movant(s):

Alfredo Manzo Arrieta

Represented By

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10:00 AM

CONT... Alfredo Manzo Arrieta and Mayte Hernandez- Arrieta
Andy C Warshaw

Chapter 13

Mayte Hernandez- Arrieta

Represented By
Andy C Warshaw

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, December 05, 2017

Hearing Room 303

2:00 PM

6:16-19993 B & B Family, Incorporated

Chapter 11

#18.00 First and Final Fee Application for Compensation with Notice for Todd L Turoci, Debtor's Attorney, Period: 11/11/2016 to 11/7/2017, Fee: \$55487.50, Expenses: \$515.37

EH__

Docket 179

Tentative Ruling:

12/5/17

On November 10, 2016, B&B Family, Inc. ("Debtor") filed a Chapter 11 voluntary petition. On November 30, 2016, the Court entered an order authorizing the employment of The Turoci Firm ("Applicant") as Debtor's general bankruptcy counsel effective November 10, 2016. On November 14, 2016, Debtor's second amended Chapter 11 plan was confirmed.

On November 8, 2016, Applicant filed a final fee application. The Court notes that Local Rule 2016-1(c)(3)(A) states that the final fee application should be filed promptly *after* confirmation, although the Court will waive the requirement because Applicant is not requesting fees for any work done during that six day period.

The Court has reviewed Applicant's final fee application and notes that Applicant has numerous time entries for which it has waived any charge to Debtor, and, while not set forth explicitly in the application, it also appears that Applicant likely waived many expense charges. Nevertheless, in reviewing the final fee application, the Court notes two areas of concern that apply to the reasonableness of many of the entries: (1) billing for repetitive activities; (2) billing rate for non-substantive activities or form documents.

Regarding (1), the Court notes that for those filings that required revisions or periodic filings, the time entries for the later entry often appear excessive given the amount of revision that occurred. For example, Applicant has a time entry on

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2:00 PM

CONT...

B & B Family, Incorporated

Chapter 11

January 19, 2017, in the amount of \$1,520 (3.8 hours), for "draft Motion to continue use of cash collateral." This was not the first cash collateral motion in the case, however, and after comparing the motion from January 2017 with the motion from November 2016, the two motions appear almost identical. As another example, Applicant has two time entries, totaling \$1,920 (4.8 hours), on May 1 and 2, 2017, for revisions to the Chapter 11 plan and disclosure statement. Those revisions, however, were minimal, as evidenced by the redlined versions [Docket Nos. 100 & 101].

Regarding (2), the courts notes that, according to Applicant's timekeeper summary, 77% of the hours worked in this case were worked by Julie Philippi, an attorney. As a result of the high percentage of entries billing at the hourly rate of an attorney, rather than a paralegal, there are a number of entries that appear to be excessive, given the work required. For instance, an entry on March 6, 2017, indicates that Applicant billed \$200 for "Amend[ing] Schedule F to add Creditor Joseph Miranda." Likewise, on June 6, 2017, Applicant billed \$200 for "Prepar [ing] Notice of continued CMC," which included a sentence identifying the continued hearing date and time.

Given the complexity of Chapter 11 proceedings and the difficult in assessing the most significant billing entries, the drafting and revising of the Chapter 11 plan and disclosure statement, the Court is inclined to propose a 20% reduction in fees – a reduction in the amount of \$11,097.50 – and approve the remaining \$44,390 in requested fees.

Applicant may consent to the above reduction and upload a proposed order, or the Court will continue the hearing to issue a detailed tentative ruling addressing individual time entries.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

B & B Family, Incorporated

Represented By
Todd L Turoci
Julie Philippi

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2:00 PM

CONT... B & B Family, Incorporated

Chapter 11

Movant(s):

B & B Family, Incorporated

Represented By

Todd L Turoci

Todd L Turoci

Todd L Turoci

Todd L Turoci

Todd L Turoci

Todd L Turoci

Todd L Turoci

Julie Philippi

Julie Philippi

Julie Philippi

Julie Philippi

Julie Philippi

Julie Philippi

Julie Philippi

**United States Bankruptcy Court
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Wednesday, December 06, 2017

Hearing Room 303

11:00 AM

6:12-35049 Michael Ann Vasquez

Chapter 7

#1.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 37

Tentative Ruling:

12/06/2017

Pursuant to the Trustee's Final Report, the Trustee has waived his statutory fee for this case. There are no other professionals to be paid. As there are no fees to be approved/paid and the Court does not per se approve the final report, there does not appear to be any action for the Court to take, and this hearing will go off calendar.

APPEARANCES WAIVED. If Movant desires some relief Movant may appear telephonically.

Party Information

Debtor(s):

Michael Ann Vasquez

Represented By

Matthew E Faler - SUSPENDED -

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, December 06, 2017

Hearing Room 303

11:00 AM

6:13-13557 Michael Sevilla Santos and Maricar Domingo Santos

Chapter 7

#2.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 132

Tentative Ruling:

12/06/2017

The hearing on the Trustee's Final Report and related Fee Applications is
CONTINUED to December 13, 2017, at 11:00 a.m.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Michael Sevilla Santos

Represented By
Jeffrey B Smith

Joint Debtor(s):

Maricar Domingo Santos

Represented By
Jeffrey B Smith

Trustee(s):

Larry D Simons (TR)

Represented By
Larry D Simons (TR)
Wesley H Avery

**United States Bankruptcy Court
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Wednesday, December 06, 2017

Hearing Room 303

11:00 AM

6:13-26729 Silvana Escobar

Chapter 7

#3.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 51

Tentative Ruling:

12/06/2017

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the following administrative claims will be allowed:

Trustee Fees: \$ 790.20

The TFR is approved and the trustee may submit on the tentative.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Silvana Escobar

Represented By
Greg C Ojeda

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, December 06, 2017

Hearing Room 303

11:00 AM

6:14-18016 Darci Marie Guzman

Chapter 7

#4.00 Trustee's Final Report and Applications for Compensation

EH__

Docket 27

Tentative Ruling:

12/06/2017

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the following administrative claims will be allowed:

Trustee Fees: \$ 443.78

The TFR is approved and the trustee may submit on the tentative.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Darci Marie Guzman

Pro Se

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, December 06, 2017

Hearing Room 303

11:00 AM

6:16-11635 Sam Daniel Dason and Greeta Sam Dason

Chapter 7

#5.00 Motion to Approve Compromise Under Rule 9019

Also #6

EH__

Docket 150

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sam Daniel Dason

Represented By
Robert G Uriarte

Joint Debtor(s):

Greeta Sam Dason

Represented By
Robert G Uriarte

Movant(s):

Lynda T. Bui (TR)

Represented By
Brett Ramsaur

Trustee(s):

Lynda T. Bui (TR)

Represented By
Brett Ramsaur

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

11:00 AM

6:16-11635 Sam Daniel Dason and Greeta Sam Dason

Chapter 7

#6.00 Motion to Sell Property of the Estate Free and Clear of Liens under Section 363 (f)

Also #5

EH__

Docket 151

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sam Daniel Dason

Represented By
Robert G Uriarte

Joint Debtor(s):

Greeta Sam Dason

Represented By
Robert G Uriarte

Movant(s):

Lynda T. Bui (TR)

Represented By
Brett Ramsaur

Trustee(s):

Lynda T. Bui (TR)

Represented By
Brett Ramsaur

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

11:00 AM

6:16-16741 Michael Stephen Williams

Chapter 7

#7.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 82

Tentative Ruling:

12/06/2017

No opposition has been filed.
Service was Proper.

The applications for compensation of the Trustee, Counsel for the Trustee, and Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the Applications of the associated professionals, the following administrative claims will be allowed:

Trustee Fees: \$ 15,250

Trustee Expenses: \$ 201.55

Attorney Fees: \$28,000

Attorney Costs: \$1,313.40

Accountant Fees: \$1,782

Accountant Costs: \$253.10

The applications for compensation are approved and the trustee and associated professionals may submit on the tentative.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Michael Stephen Williams

Represented By

Michael R Lewis - SUSPENDED -

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

11:00 AM

CONT... Michael Stephen Williams

Chapter 7

Trustee(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

11:00 AM

6:17-10720 Hiep Huu Phan

Chapter 7

#8.00 Motion for Order: (1) Authorizing Sale of Estate's Right, Title, and Interest in Real Property; Approving Overbid Procedure; (3) Approving Payment of Commissions; and (4) Finding Purchaser is a Good Faith Purchaser; Memof of Ps and A's; Decls of Karl T Anderson and Richard A Halderman Jr in Support

EH__

Docket 43

Tentative Ruling:

12/06/2017

BACKGROUND

On January 30, 2017, Hiep Huu Phan ("Debtor") filed his petition for chapter 7 relief. Karl Anderson is the duly appointed chapter 7 trustee ("Trustee"). Among the assets of the Debtor's estate is certain real property located at 3073 Coventry Street in Corona, CA (the "Property").

On November 10, 2017, the Trustee filed a motion seeking court authorization to sell the Property ("Motion"). The Motion indicates that the Property is held by the Debtor and his wife, Whitney Nguyen, husband and wife as joint tenants. In response to the Motion, the nonfiling spouse filed an opposition indicating that she does not oppose sale of the Property but that she has a pending divorce action and seeks to have any funds payable to her segregated into a Trust Fund pending resolution in family court regarding her "rightful share" of the \$75,000 proposed payment to the Debtor in exempt funds.

DISCUSSION

In reviewing the Motion, the Court notes that the Debtor's nonfiling spouse is indicated as holding a joint tenancy with the Debtor as to the Property. (Motion at 7:8-9). Notwithstanding this fact, the Court has no indication from the Trustee that he has sought to sell the Property free of the nonfiling spouse's interest in compliance with 11 U.S.C. § 363(h) and no adversary has been filed by the Trustee. *In re Reed*, 940 F.2d 1317, 1323-32 (9th Cir. 1991) (In bankruptcy a trustee can sell the entire property rather than just the joint-tenant's interest, provided certain conditions are

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

11:00 AM

CONT... **Hiep Huu Phan**

Chapter 7

met)(citing 11 U.S.C. § 363(h)). To the contrary, the Motion appears to indicate that the Trustee contemplates paying the Debtor and his nonfiling spouse the total amount of the exemption claimed by the Debtor in his amended Schedule C, without paying the nonfiling spouse the value of a joint tenancy interest in the Property. (Mot. at 12). Based on the opposition of the nonfiling spouse, it appears that she is not clear about what amount she may be owed from the sale of the Property. To avoid a potential future dispute regarding the funds, the Trustee should follow the customary procedure of seeking a sale consistent with the requirements of § 363(h).

TENTATIVE RULING

Based on the foregoing, the Court is inclined to DENY the Motion for the Trustee to demonstrate compliance with the requirements of 11 U.S.C. § 363(h).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Hiep Huu Phan

Represented By
Toby T Tran

Movant(s):

Karl T Anderson (TR)

Represented By
Misty A Perry Isaacson

Trustee(s):

Karl T Anderson (TR)

Represented By
Misty A Perry Isaacson

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

11:00 AM

6:17-18511 Joshua C Richardson

Chapter 7

#9.00 Order to Show Cause Hearing re dismissal of case

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joshua C Richardson

Represented By
Amid Bahadori

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

2:00 PM

6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#10.00 CONT Motion For Summary Judgment/Memorandum of Points and Authorities on the Preclusive Effect of Plaintiff's State Court Judgment
HOLDING DATE

From: 6/7/17, 7/12/17, 8/2/17, 9/27/17, 10/4/17, 11/1/17

Also #11

EH__

Docket 208

***** VACATED *** REASON: Continued to 12/20/17 at 2:00 pm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi
Ryan F Thomas

Movant(s):

Charles Edward Schrader

Pro Se

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

2:00 PM

6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#11.00 CONT Status Conference RE: Adversary case 6:13-ap-01171. Complaint by Charles Edward Schrader against Narinder Sangha . willful and malicious injury
HOLDING DATE

From: 7/8/15, 11/4/15, 3/2/16, 12/14/16, 12/13/17, 4/5/17, 6/7/17, 7/12/17, 8/2/17, 9/27/17, 10/4/17, 11/1/17

Also #10

EH__

Docket 1

***** VACATED *** REASON: Continued to 12/20/17 at 2:00 pm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi
Ryan F Thomas

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

2:00 PM

6:16-12900 Richard G Rothman

Chapter 7

Adv#: 6:16-01170 California Solar Thermal, Inc. v. Rothman

#12.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01170. Complaint by California Solar Thermal, Inc. against Richard G Rothman. Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)

From: 9/7/16, 1/11/17, 5/17/17, 6/7/17

EH__

Docket 1

***** VACATED *** REASON: CASE DISMISSED 11/9/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard G Rothman

Represented By
Daniel J Winfree

Defendant(s):

Richard G Rothman

Represented By
Daniel J Winfree

Joint Debtor(s):

Shari A Randall

Represented By
Daniel J Winfree

Plaintiff(s):

California Solar Thermal, Inc.

Represented By
Douglas A Plazak

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

2:00 PM

CONT... Richard G Rothman

Chapter 7

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

2:00 PM

6:17-13649 Fernando Fabrigas, Sr.

Chapter 7

Adv#: 6:17-01156 Daff v. Fabrigas, Jr.

#13.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01156. Complaint by Charles W. Daff against Fernando Fabrigas, Jr.. (Charge To Estate \$350.00). for: 1) Avoidance of Intentional Fraudulent Transfers and Recovery of Same [11 U.S.C. §§ 544, 548, 550, 551; CAL. CIV. CODE §§ 3439.04, 3439.07, 3439.08]; 2) Avoidance of Constructive Fraudulent Transfers and Recovery of Same [11 U.S.C. §§ 544, 548, 550, 551; CAL. CIV. CODE §§ 3439.04, 3439.05, 3439.07, 3439.08, 3439.09]; 3) Disallowance of Claims [11 U.S.C. §502(d)]; 4) Unjust Enrichment [11 U.S.C. § 105]; 5) Declaratory Relief [11 U.S.C. §§ 541, 544; FRBP 7001(9)]; AND 6) Turnover of Property of the Estate [11 U.S.C. § 542] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)) (Iskander, Brandon)

From: 11/8/17

EH__

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED
11/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fernando Fabrigas Sr.

Represented By
R Creig Greaves

Defendant(s):

Fernando Fabrigas, Jr.

Pro Se

Joint Debtor(s):

Estela F. Fabrigas

Represented By
R Creig Greaves

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

2:00 PM

CONT... Fernando Fabrigas, Sr.

Chapter 7

Plaintiff(s):

Charles W. Daff

Represented By
Brandon J Iskander

Trustee(s):

Charles W Daff (TR)

Represented By
Lynda T Bui
Brandon J Iskander

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

2:00 PM

6:17-13853 Malik Muhammad Asif

Chapter 7

Adv#: 6:17-01197 Itria Ventures, LLC v. Asif et al

#14.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01197. Complaint by Itria Ventures, LLC against Malik Muhammad Asif, Zobia Asif. false pretenses, false representation, actual fraud))

From: 11/15/17

EH__

Docket 1

*** VACATED *** REASON: CONTINUED TO 1/10/18 AT 2:00 pm

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Malik Muhammad Asif

Represented By
Todd L Turoci

Defendant(s):

Malik Muhammad Asif

Represented By
David T Egli

Zobia Asif

Represented By
David T Egli

Joint Debtor(s):

Zobia Asif

Represented By
Todd L Turoci

Plaintiff(s):

Itria Ventures, LLC

Represented By
Michael F Chekian

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

2:00 PM

CONT... Malik Muhammad Asif

Chapter 7

Trustee(s):

Arturo Cisneros (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

3:00 PM

6:17-19936 Auto Strap Transport, LLC

Chapter 11

#15.00 Motion in Individual Ch 11 Case for Order Authorizing Payment of Prepetition Payroll and to Honor Prepetition Employment Procedures (LBR 2081-1(a)(6))

ALSO #16

EH__

Docket 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Auto Strap Transport, LLC

Represented By
Todd L Turoci

Movant(s):

Auto Strap Transport, LLC

Represented By
Todd L Turoci

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

3:00 PM

6:17-19936 Auto Strap Transport, LLC

Chapter 11

#16.00 Motion to Approve Use of Cash Collateral

ALSO #15

EH__

Docket 5

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Auto Strap Transport, LLC

Represented By
Todd L Turoci

Movant(s):

Auto Strap Transport, LLC

Represented By
Todd L Turoci

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 06, 2017

Hearing Room 303

3:30 PM

6:17-10724 Bausman and Company Incorporated

Chapter 7

#17.00 Motion for Order (1) approving sale of personal property; (2) approving the sale free and clear of liens; (3) approving overbid procedure; (4) determining that the proposed buyer is a good faith purchaser and (5) subordination of certain tax liens and waiver of the stay

EH _____

Docket 129

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bausman and Company Incorporated

Represented By
William A Smelko

Movant(s):

Robert Whitmore (TR)

Represented By
Franklin C Adams
Best Best & Krieger

Trustee(s):

Robert Whitmore (TR)

Represented By
Franklin C Adams
Best Best & Krieger

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 12, 2017

Hearing Room 303

9:30 AM

6:13-25725 Bernadette Chapman

Chapter 11

Adv#: 6:17-01046 Chapman v. U.S. Bank, NA et al

#1.00 Settlement Conference (MJ Case)

EH__

Docket 0

***** VACATED *** REASON: TO BE RESCHEDULED**

Party Information

Debtor(s):

Bernadette Chapman

Represented By
Todd L Turoci

Defendant(s):

U.S. Bank, NA

Represented By
Sonia Plesset Edwards
Gwen H Ribar

Wenjing Dai

Represented By
Robert O Marshall

Plaintiff(s):

Bernadette Chapman

Represented By
Todd L Turoci
Julie Philippi

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 12, 2017

Hearing Room 303

10:00 AM

6:16-11302 Robert Allan Gloeckner and Lucia Ann Gloeckner

Chapter 13

#2.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2496-2498 Olive Ave Long Beach CA 90806

MOVANT: US BANK

From: 11/28/17

EH__

Docket 49

***** VACATED *** REASON: WITHDRAWAL FILED 12/5/17**

Party Information

Debtor(s):

Robert Allan Gloeckner

Represented By
Jenny L Doling

Joint Debtor(s):

Lucia Ann Gloeckner

Represented By
Jenny L Doling

Movant(s):

U.S. Bank NA, successor trustee to

Represented By
Caren J Castle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 12, 2017

Hearing Room 303

10:00 AM

6:17-16257 Maria Armina Policarpio Trinidad

Chapter 7

#3.00 Motion for relief from the automatic stay with supporting declarations
UNLAWFUL DETAINER Re: 45675 Sugarloaf Mountain, Indian Wells CA 92210

MOVANT: WELLS FARGO BANK NA

EH__

Docket 28

Party Information

Debtor(s):

Maria Armina Policarpio Trinidad Pro Se

Movant(s):

WELLS FARGO BANK, N.A. Represented By
Alexander K Lee
Sean C Ferry
Kevin A Harris

Trustee(s):

Charles W Daff (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

10:00 AM

6:17-16839 Rhonda Lynn Hale

Chapter 7

#1.00 Reaffirmation Agreement Between Debtor and Balboa Thrift & Loan Re: 2016
Honda Civic LX Sedan 4D

EH__

Docket 18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rhonda Lynn Hale

Pro Se

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

10:00 AM

6:17-17208 Grace Nallely Ponce

Chapter 7

#2.00 Pro se Reaffirmation Agreement Between Debtor and American Honda Finance Corporation: 2014 Honda CRV \$20,486.81

Also #3

EH__

Docket 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Grace Nallely Ponce

Pro Se

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

10:00 AM

6:17-17208 Grace Nallely Ponce

Chapter 7

#3.00 Pro se Reaffirmation Agreement Between Debtor and JPMorgan Chase Bank
NA Re: 2014 Honda Accord

Also #2

EH__

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Grace Nallely Ponce

Pro Se

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

10:00 AM

6:17-17280 Luis Ramon Villarrea Garcia and Carina Garcia

Chapter 7

#4.00 Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation
Re: 2010 Toyota Sienna

EH__

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Luis Ramon Villarreal Garcia

Represented By
George P Hobson Jr

Joint Debtor(s):

Carina Garcia

Represented By
George P Hobson Jr

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

10:00 AM

6:17-17303 Eric Jabbar Norwood and Linda Lee Norwood

Chapter 7

#5.00 Pro se Reaffirmation Agreement Between Debtor and Firefighters First Credit Union re Visa Classic

Also #6

EH__

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eric Jabbar Norwood

Represented By
Marc A Duxbury

Joint Debtor(s):

Linda Lee Norwood

Represented By
Marc A Duxbury

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

10:00 AM

6:17-17303 Eric Jabbar Norwood and Linda Lee Norwood

Chapter 7

#6.00 Pro se Reaffirmation Agreement Between Debtor and Firefighters First Credit Union re 2004 GMC Sierra 1500 SLE 2GTEC19T841408627

Also #5

EH__

Docket 18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eric Jabbar Norwood

Represented By
Marc A Duxbury

Joint Debtor(s):

Linda Lee Norwood

Represented By
Marc A Duxbury

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

10:00 AM

6:17-17772 Sandy Samboeun Nuon

Chapter 7

**#7.00 Pro se Reaffirmation Agreement Between Debtor and TD Auto Finance LLC
(2013 Mercedes-Benz GL550) \$48,988.06**

EH__

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sandy Samboeun Nuon

Represented By
Dana Travis

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

10:00 AM

6:17-17858 Fabian Rodriguez and America Rodriguez

Chapter 7

#8.00 Pro se Reaffirmation Agreement Between Debtor and Alaska USA Federal Credit Union, in the amount of \$6,563.13; 2008 Chevrolet Avalanche

EH__

Docket 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fabian Rodriguez Pro Se

Joint Debtor(s):

America Rodriguez Pro Se

Trustee(s):

Karl T Anderson (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

10:00 AM

6:17-18079 Ricardo Chavez

Chapter 7

#9.00 Reaffirmation Agreement Between Debtor and Ford Motor Credit Company LLC
Re: 2015 Ford Fusion

EH__

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ricardo Chavez

Pro Se

Trustee(s):

Robert Whitmore (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

10:00 AM

6:17-18387 MARY RUTH STEPHENS

Chapter 7

#10.00 Pro se Reaffirmation Agreement Between Debtor and Gateway One Lending & Finance, LLC; 2006 Toyota RAV 4-4 CYL 4D Sport JTMZD35V565023660 in the amount of \$4665.22

EH__

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

MARY RUTH STEPHENS

Represented By
Mark D Edelbrock

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

10:00 AM

6:17-18599 Jason William Weller and Amy Lynn Weller

Chapter 7

#11.00 Reaffirmation Agreement Between Debtor and OneMain Financial Services
Re: 05 GMC Sierra 1500

EH__

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jason William Weller	Pro Se
----------------------	--------

Joint Debtor(s):

Amy Lynn Weller	Pro Se
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Trustee(s):

John P Pringle (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

11:00 AM

6:09-35625 Pamela J. Carmichael

Chapter 7

#12.00 CONT Motion Seeking an Order Instructing the Trustee to Reissue a Total of Three Checks: (1) For Outstanding Attorney Fees Owed to Doling Shaw & Hanover, APC; and (2) Two Checks Representing the Remaining Balance to be Split Evenly Between Debtor/Decedent's Mother and Father per the Probate Estate §13101

From: 11/29/17

EH__

Docket 88

Tentative Ruling:

11/29/17

BACKGROUND

On October 26, 2009, Pamela Carmichael ("Debtor") filed a Chapter 13 voluntary petition. On January 13, 2010, Debtor's Chapter 13 plan was confirmed. On April 23, 2010, the case was converted to Chapter 7. On August 16, 2010, Debtor received a discharge, and, three days later, the case was closed.

On March 21, 2016, the case was reopened to administer assets upon the motion of UST. Specifically, the asset to be administered was the proceeds from a class action judgment. After payment of all claims in Debtor's case, there was a surplus of \$28,825.67 to be returned to Debtor. According to Debtor's attorney, she received a check from Trustee in the amount of \$28,825.67 on July 11, 2017. Debtor's attorney states that she had "numerous conversations" with the class-action attorney and the trustee, and that, "[u]ltimately, it was determined that new checks needed to be issued. Specifically, Debtor's attorney requests three checks: (1) \$3,000 for Doling Shaw & Hanover, APC (of which \$1,500 is for "work completed to assist the bankruptcy estate

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

11:00 AM

CONT... Pamela J. Carmichael Chapter 7

in distributing the surplus funds"); (2) \$12,912.84 to George Charles Carmichael; and (3) \$12,912.84 to Pamela Ehrlich. The Court notes that the total amount of the three checks is \$28,825.68 – essentially the same amount as the originally issued check.

On November 7, 2017, the Trustee filed a notice of non-opposition.

DISCUSSION

The division of Debtor's probate estate as between successors, and resolution of claims against the probate estate, are matters of probate law, not bankruptcy law. The Trustee's responsibility, and this Court's supervisory duty, is limited to assuring that the Trustee issues the surplus check to Debtor. The subsequent division of those funds does not appear to be a matter for the bankruptcy court, but is a matter for probate law. While it is unclear whether Court approval of fees is required, no such approval is requested here. Last, importantly, it does not appear the motion has been noticed to or served upon a representative of the probate estate or upon Debtor's heirs.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Pamela J. Carmichael

Represented By
Jenny L Doling

Movant(s):

Pamela J. Carmichael

Represented By
Jenny L Doling

Trustee(s):

Helen R. Frazer (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

11:00 AM

6:10-22320 Rochelle A Lara

Chapter 7

#13.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 45

Tentative Ruling:

12/13/2017

No opposition has been filed.

Service was Proper.

The applications for compensation of the Trustee and Counsel for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the applications of the associated professionals, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 3,225

Trustee Expenses: \$ 4.75

Attorney Fees: \$ 10,300

Attorney Costs:\$ 382.71

The approved attorney fees incorporate two reductions. First, there is a reduction in \$1,032.50 corresponding to the amount requested for an appearance at the hearing on December 13, 2017. Counsel is not permitted to be reimbursed for defending their requested fees, and the defense of their requested fees is the only reason why an appearance would be made at the hearing on December 13, 2017. Second, there is a reduction of \$1,698.50 related to two time entries on March 1, 2017 for the drafting of a settlement motion. No settlement motion, however, was filed until May 2017, and there are future time entries documenting the time spent drafting the settlement motion. Because it is unclear what the March 1, 2017, time entries are for, or how those efforts could have benefited the estate, and given that the attorney's fees are noticeably higher than distributions to unsecured creditors, the Court will disallow these entries as unreasonable.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

11:00 AM

CONT... Rochelle A Lara

Chapter 7

Movant may decline to appear and submit on the tentative or appear to argue the tentative.

Party Information

Debtor(s):

Rochelle A Lara

Represented By
Brian C Fenn

Trustee(s):

Karl T Anderson (TR)

Represented By
Robert A Hessling

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

11:00 AM

6:17-16501 Julio Cesar Suarez Negrete

Chapter 7

#14.00 Motion for extension of time to file a complaint objecting to discharge

EH__

Docket 18

Tentative Ruling:

12/13/17

BACKGROUND

On August 4, 2017, Julio Negrete ("Debtor") filed a Chapter 7 voluntary petition. On October 18, 2017, the Court authorized a Rule 2004 examination of Debtor by Daniel's Jewelers ("Creditor"). On November 7, 2017, Creditor filed a motion to extend the § 523 deadline for filing a non-dischargeability complaint and postpone discharge.

Creditor's motion asserts that in September 2016 Debtor purchased a pair of Movado watches and certain earrings for a total of \$3,445.15. Debtor made the purchase on credit and Creditor retained a security interest in the jewelry. Debtor did not, however, list the jewelry on his schedules, nor did he identify the jewelry as gifted or lost on his schedules.

Creditor states that at the Rule 2004 examination, Debtor stated he made the purchase for, and on behalf of, his cousin. Creditor states that Debtor did not provide any accurate information that would allow Creditor to contact Debtor's cousin or verify Debtor's account. Creditor requests a 45 day extension of the §§ 523 & 727 deadlines to allow Creditor to attempt to verify Debtor's account of the location of the jewelry.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

11:00 AM

CONT... Julio Cesar Suarez Negrete

Chapter 7

DISCUSSION

Fed. R. Bankr. P. Rule 4007(c) states:

Except as otherwise provided in subdivision (d), a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

Here, Creditor timely filed a motion to extend the deadline. The Court finds that Creditor has established cause for an extension under Rule 4007(c). Specifically, Creditor has established that it moved promptly to determine the location and status of the jewelry identified in the background section above. Nevertheless, despite those efforts, Creditor has not provided adequate information that would enable Creditor to locate the jewelry in which it retains a security interest. Debtor's lack of full cooperation in Creditor's discovery efforts constitutes cause for a brief extension. *See, e.g., In re McCormack*, 244 B.R. 203, 208 (Bankr. D. Conn. 2000). Therefore, the Court finds that Creditor's requested forty-five day extension is warranted.

Regarding Creditor's additional request that Debtor's discharge be postponed, the Court finds Creditor's request lacks a proper legal basis. Fed. R. Bankr. P. Rule 4004 (c) provides a list of situations and events that will result in a delay of the granting of a discharge. Here, the fact that Debtor is contemplating the filing of a non-dischargeability complaint does not warrant the postponement of Debtor's discharge. Bankruptcy courts routinely adjudicate non-dischargeability complaints after a discharge has been granted and, therefore, Creditor's contention that an extension of the deadline to file a non-dischargeability complaint should naturally postpone the granting of a discharge, is unwarranted.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

11:00 AM

CONT... Julio Cesar Suarez Negrete

Chapter 7

TENTATIVE RULING

The Court is inclined to GRANT the motion IN PART, extending the deadline to file a non-dischargeability complaint until December 22, 2017. The Court is inclined to DENY the request to postpone discharge.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Julio Cesar Suarez Negrete

Represented By
Keith Q Nguyen

Movant(s):

DANIELS JEWELERS

Represented By
Richard W Snyder

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

11:00 AM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

#15.00 CONT Motion to Approve Compromise Under Rule 9019 between Trustee and Dr. Eric L. Freedman

From: 5/11/16, 6/8/16, 6/29/16, 8/31/16, 10/5/16, 11/9/16, 2/1/17, 5/3/17, 9/13/17

EH__

Docket 322

***** VACATED *** REASON: CONTINUED TO 2/14/18 AT 11:00 A.M.**

Tentative Ruling:

05/11/2016

Based on the representations made to the Court by counsel for the Parties that negotiations are ongoing, and based on the consent of the Parties to a continuance, the Court shall CONTINUE the hearing on the Motion to June 8, 2016 at 11:00 a.m.

APPEARANCES ARE WAIVED.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Movant(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

Trustee(s):

Arturo Cisneros (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

11:00 AM

CONT...

Douglas J Roger, MD, Inc., A Professional Corporat

Chad V Haes

D Edward Hays

Franklin R Fraley Jr

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

11:00 AM

6:14-17350 Dean L. Springer, Sr. and Tami Jo Springer

Chapter 7

#16.00 CONT Motion to Quash and Motion for Protective Order

From: 8/30/17, 9/20/17, 11/1/17

EH__

Docket 148

***** VACATED *** REASON: CONTINUED TO 2/7/18 AT 11:00 am**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dean L. Springer Sr.	Pro Se
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Joint Debtor(s):

Tami Jo Springer	Pro Se
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Movant(s):

Hilder & Associates	Represented By Lei Lei Wang Ekvall
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Trustee(s):

Larry D Simons (TR)	Represented By Richard A Marshack Sarah Cate Hays D Edward Hays
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**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

11:00 AM

6:16-18399 Flaviano Lopez and Maria del Carmen Lopez

Chapter 7

#17.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 31

Tentative Ruling:

12/13/2017

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: \$ 1,400.74
Trustee Expenses: \$ 123.27

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Flaviano Lopez

Represented By
Robert W Ripley

Joint Debtor(s):

Maria del Carmen Lopez

Represented By
Robert W Ripley

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

11:00 AM

6:14-17400 J. T. Site Development, Inc.

Chapter 7

Adv#: 6:15-01241 Simons v. Precision Mechanical & Refrigeration Services, Inc

#18.00 Application and Order for appearance and examination

EH__

Docket 25

***** VACATED *** REASON: WITHDRAWAL FILED 12/8/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

J. T. Site Development, Inc.

Represented By
Andrew S Bisom

Defendant(s):

Precision Mechanical &

Pro Se

Movant(s):

Larry D Simons

Represented By
Frank X Ruggier
Allan D Sarver

Plaintiff(s):

Larry D Simons

Represented By
Frank X Ruggier
Allan D Sarver

Trustee(s):

Larry D Simons (TR)

Represented By
Frank X Ruggier

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

11:00 AM

6:13-21098 Monica Faye Wooley

Chapter 7

#19.00 Order to Show Cause why Debtor should not be held in Contempt of Court for Violation of Turnover Order

EH__

Docket 47

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monica Faye Wooley

Represented By
Filemon Kevin Samson III

Trustee(s):

Helen R. Frazer (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

2:00 PM

6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#20.00 CONT Status Conference RE: Adversary case 6:13-ap-01171. Complaint by Charles Edward Schrader against Narinder Sangha . willful and malicious injury

From: 7/8/15, 11/4/15, 3/2/16, 12/14/16

EH__

Docket 1

***** VACATED *** REASON: ADVANCED TO 4/5/2017 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi
Ryan F Thomas

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

2:00 PM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat
Adv#: 6:15-01303 Cisneros v. AMERICAN EXPRESS

Chapter 7

#21.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01303. Complaint by A. Cisneros against AMERICAN EXPRESS. (Charge To Estate \$350). For Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers (with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 1/13/16, 3/23/16, 5/25/16, 6/29/16, 8/31/16, 11/2/16, 2/1/17, 5/3/17 9/13/17

EH__

Docket 1

*** VACATED *** REASON: CONTINUED TO 2/14/18 AT 2:00 PM

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

AMERICAN EXPRESS

Represented By
Robert S Lampl
Chad V Haes

Plaintiff(s):

A. Cisneros

Represented By
D Edward Hays
Chad V Haes

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

2:00 PM

CONT... Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

2:00 PM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Adv#: 6:15-01304 Cisneros v. Kajan Mather & Barish, a professional corporation

#22.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01304. Complaint by A. Cisneros against Kajan Mather & Barish, a professional corporation, MATHER KUWADA, a limited liability partnership, MATHER LAW CORPORATION, a California corporation, LAW OFFICE OF KENNETH M. BARISH, Steven R. Mather, Kenneth M. Barish. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 1/13/16, 3/30/16, 4/6/16, 5/4/16, 5/25/16, 9/28/16, 11/2/16, 11/9/16, 12/14/16, 1/11/17, 5/17/17, 6/7/17, 6/28/17

EH__

Docket 1

Tentative Ruling:

12/14/2016

The instant Status Conference is CONTINUED to January 11, 2017, at 2:00 p.m., to be heard in conjunction with Defendants' Motion for Summary Judgment

APPEARANCES WAIVED.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

Kajan Mather & Barish, a

Represented By

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

2:00 PM

CONT... Douglas J Roger, MD, Inc., A Professional Corporat Chapter 7

Michael S Kogan

MATHER KUWADA, a limited

Represented By
Michael S Kogan

MATHER LAW CORPORATION,

Represented By
Michael S Kogan

Steven R. Mather

Pro Se

Kenneth M. Barish

Pro Se

Plaintiff(s):

A. Cisneros

Represented By
D Edward Hays
Chad V Haes
Franklin R Fraley Jr
Sue-Ann L Tran
Jasmine W Wetherell

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

2:00 PM

6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Adv#: 6:15-01308 Cisneros v. BWI CONSULTING, LLC et al

#23.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01308. Complaint by A. Cisneros against BWI CONSULTING, LLC, Black and White, Inc., BLACK AND WHITE BILLING COMPANY, BLACK AND WHITE INK, MEHRAN DEVELOPMENT CORPORATION. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers (with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other))

From: 1/13/16, 3/23/16, 5/25/16, 7/27/16, 8/31/16, 11/2/16, 2/1/17, 5/3/17, 9/13/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 2/14/18 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

BWI CONSULTING, LLC	Pro Se
Black and White, Inc.	Pro Se
BLACK AND WHITE BILLING	Pro Se
BLACK AND WHITE INK	Pro Se
MEHRAN DEVELOPMENT	Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

2:00 PM

CONT... Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Plaintiff(s):

A. Cisneros

Represented By
D Edward Hays
Chad V Haes

Trustee(s):

Arturo Cisneros (TR)

Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

2:00 PM

6:14-12990 Garrick Craig Smedman

Chapter 7

Adv#: 6:17-01121 Smedman et al v. STATE BOARD OF EQUALIZATION

#24.00 CONT Status Conference RE: [1] Adversary case 6:17-ap-01121. Complaint by Craig Smedman against STATE BOARD OF EQUALIZATION. (Fee Not Required \$350.00). Joint Plaintiff Veronica Lee Wilkins Nature of Suit: (91 (Declaratory judgment)),(72 (Injunctive relief - other))

From: 8/30/17, 9/27/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 1/10/18 AT 2:00 P.M.
ANOTHER SUMMONS ISSUED**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Garrick Craig Smedman

Represented By
Neil C Evans

Defendant(s):

STATE BOARD OF

Pro Se

Joint Debtor(s):

Veronica Lee Wilkins

Represented By
Neil C Evans

Plaintiff(s):

Craig Smedman

Represented By
Neil C Evans

Veronica Lee Wilkins

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

2:00 PM

CONT... Garrick Craig Smedman

Chapter 7

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

2:00 PM

6:14-14377 Hilary D Hill

Chapter 7

Adv#: 6:15-01206 Speier v. Simmons et al

#25.00 Pre-Trial Conference RE: [1] Adversary case 6:15-ap-01206. Complaint by Steven M Speier against Angela Simmons, David Schanhals, Hilary D Hill

EH__

Docket 1

*** VACATED *** REASON: CONTINUED TO 2/14/18 AT 2:00 PM

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hilary D Hill

Represented By
Matthew D Resnik
David Brian Lally

Defendant(s):

Angela Simmons

Represented By
David Brian Lally

David Schanhals

Represented By
David Brian Lally

Hilary D Hill

Represented By
David Brian Lally

Plaintiff(s):

Steven M Speier

Represented By
Robert P Goe

Trustee(s):

Steven M Speier (TR)

Represented By
Robert P Goe
Elizabeth A LaRocque

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, December 13, 2017

Hearing Room 303

2:00 PM

CONT... Hilary D Hill

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

2:00 PM

6:17-12748 William A. Mendez, II

Chapter 7

Adv#: 6:17-01129 Hadra et al v. Mendez et al

#26.00 CONT Status Conference Re: Complaint by Andrew C. Hadra against William A. Mendez. false pretenses, false representation, actual fraud, 67- Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny, 68 - Dischargeability - 523(a)(6), willful and malicious injury

From: 9/13/17

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William A. Mendez II

Represented By
Thomas J Polis

Defendant(s):

William A. Mendez

Represented By
Thomas J Polis

Shawna D Mendez

Represented By
Thomas J Polis

Joint Debtor(s):

Shawna D. Mendez

Represented By
Thomas J Polis

Plaintiff(s):

Andrew C. Hadra

Represented By
Peter W Lianides
Alan Droste

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 13, 2017

Hearing Room 303

2:00 PM

CONT... William A. Mendez, II
Vertical Partners LLC

Chapter 7

Represented By
Peter W Lianides
Alan Droste

Trustee(s):

Arturo Cisneros (TR)

Represented By
Todd A Frealy

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

11:00 AM

6:17-15978 Conchita C Ang

Chapter 13

#1.00 Motion with Notice to Reconsider The Material Facts and Order of the Hearing Held by Movant on October 24, 2017; For Sanctions on Respondents; To Reopen this Case and Allow Filing an Adversary Proceeding and Evidentiary Hearing to Disclose Fraud on the Court

EH__

Docket 44

Tentative Ruling:

12/14/2017

BACKGROUND

On July 18, 2017 ("Petition Date"), Conchita Ang ("Debtor") filed her petition for chapter 13 relief. Rod Danielson was the duly appointed chapter 13 trustee ("Trustee"). On August 18, 2017, the Debtor filed a Motion for Turnover of Property (I) to Enforce the Automatic Stay; (II) for an Order to Show Cause (OSC); (III) to Compel Compliance with the Court Order; (IV) and for Sanctions (the "Turnover Motion") as to Wells Fargo Bank, N.A. ("Wells") based on its alleged wrongful foreclosure of the Debtor's real property located at 2150 Horse Trail Drive in Redlands, CA (the "Property").

On August 31, 2017, a confirmation hearing was held as to the Debtor's chapter 13 plan of reorganization. For the reasons stated on the record in open court, the Court dismissed the Debtor's chapter 13 case with a 180 day bar ("Dismissal Order").

An initial hearing on the Turnover Motion was held on September 14, 2017, at which the Court indicated that although it appeared a violation of the automatic stay occurred, continuance was warranted based on the representation by Wells that it would seek annulment of the stay. The hearing on the Turnover was continued to October 26, 2017.

On September 22, 2017, Wells filed a motion for relief from the automatic stay (the "RFS Motion") as to the Property. A hearing on the RFS Motion was held on October 24, 2017, at which the Court's oral ruling was to grant the RFS Motion, in

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

11:00 AM

CONT... Conchita C Ang

Chapter 13

part and deny it in part. On October 26, 2017, at the continued hearing on the Debtor's Turnover Motion, the Court denied the Turnover Motion as moot based on its October 24, 2017, oral ruling granting Wells's request for annulment. On November 6, 2017, the Court entered its order granting the RFS Motion (the "RFS Order"). On November 17, 2017, the Court entered its Order Denying Motion for Turnover of Property ("Turnover Order").

On November 16, 2017, the Debtor filed her "Motion with Notice to Reconsider The Material Facts and Order of the Hearing Held by Movant on October 24, 2017; For Sanctions on Respondents; To Reopen this Case and Allow Filing an Adversary Proceeding and Evidentiary Hearing to Disclose Fraud on the Court" (the "Motion"). Subsequently, the Court issued an order setting a hearing on the Debtor's Motion for December 14, 2017.

On November 27, 2017, Wells timely filed opposition to the Motion ("Opposition"). Debtor filed no reply.

DISCUSSION

As a threshold matter, the Debtor makes various allegations regarding alleged misconduct and/or bias on the part of the Court. However, the Debtor provides no evidence to substantiate her allegations and as such, the Court disregards and otherwise strikes the Debtor's allegations of judicial misconduct/bias.

MOTION TO REOPEN CASE

The Debtor seeks to reopen her case. However, the case has remained open due to various pending motions in the case since dismissal and, as of December 14, 2017, remains open. Thus, the Court's tentative ruling is to DENY the Debtor's request to reopen the case as moot.

Alternatively, to the extent that the Court construes the Motion as seeking an order vacating the dismissal rather than an order simply reopening the case, the Motion does not address the bases for dismissal of the Debtor's chapter 13 case or why reconsideration of the Dismissal Order is warranted. As such, any request to

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

11:00 AM

CONT... **Conchita C Ang**

Chapter 13

vacate dismissal of the case is also DENIED and is not properly before the Court.

MOTION FOR SANCTIONS

The basis advanced for issuance of sanctions against Wells is the Debtor's assertion that Wells failed to comply with an issued order to show cause. (Mot. at 5:4-6, 7:3-6) However, as indicated in the above background section, the Debtor's request for an order to show cause was encapsulated within her Turnover Motion. The Turnover Motion was denied on November 17, 2017, and in connection with that denial, no order to show cause ever issued as to Wells. Moreover, the Court notes that the Debtor made no appearance at the continued hearing on the Turnover Motion which took place on October 26, 2017. [FN.1]. Based on the foregoing, the Debtor's instant request for sanctions based on alleged noncompliance is misplaced because the Debtor has failed to demonstrate that Wells failed to comply with any Court order.

FN.1: It appears that the Debtor misapprehended the Court's tentative ruling for an actual order. The Court's tentative ruling issued prior to the September 14, 2017, hearing had indicated that the Court was inclined to issue an order to show cause. However, a tentative ruling is "tentative" (i.e. "not fixed or certain") until and unless it is adopted by the Court as its final ruling and attached to the Court's final order.

Alternatively, to the extent that the instant Motion can be construed as a renewed motion for sanctions against Wells based on allegations that Wells violated the automatic stay, such a request is not properly before the Court because the Court previously denied the Debtor's request for an order to show cause in the Turnover Order. Thus, based on the prior denial, the Debtor must comply with LBR 9013-1(l) regarding "Motions Previously Denied", and has failed to do so. Alternatively, the Debtor could have sought reconsideration of the Court's Turnover Order which the Debtor also has not done.

MOTION FOR RECONSIDERATION OF RELIEF FROM STAY ORDER

Civil Rule 60(b), made applicable through Federal Bankruptcy Rule 9024,

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provides that the bankruptcy court may relieve a party from an order 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 [Civil] Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FRBP 60(b). Debtor's Motion fails to indicate which enumerated basis for reconsideration underlies her Motion. However, the Court construes the Debtor's Motion as falling within Rule 60(b)(3) based on the Debtor's allegations that Wells has "perpetrated a fraud on this Court" and "misled the Court" (Mot. at 4:5-9) and that Wells's foreclosure actions constitute a "total misrepresentation and fraud perpetrated on this Court" (Mot. at 6:1-2).

To prevail on a motion under Rule 60(b)(3), the moving party must prove by clear and convincing evidence that the [order] was obtained through fraud, misrepresentation, or other misconduct and the conduct complained of prevented the losing party from fully and fairly presenting the defense. *De Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th Cir. 2000). Rule 60(b)(3) "is aimed at judgments which were unfairly obtained, not at those which are factually incorrect." *Id.*

Here, the crux of Debtor's allegation of fraud is that Wells "persuaded and wrongfully influence[d] this Court to believe they are the real party in interest." As to the Debtor's allegations of fraud generally, the Court agrees with the Opposition that

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the Debtor's allegations of fraud are not pled with specificity as required under FRCP 9 and those allegations are thus insufficient to establish fraud to justify relief under Rule 60(b)(3). Separately, as to Wells's standing (which the Debtor now contests), Exhibit 5 to the RFS Motion is a copy of the Trustee's Deed Upon Sale which clearly identifies Wells Fargo Bank, N.A. as the successful purchaser at the foreclosure sale of the Property held on July 18, 2017. Notwithstanding the fact that the Debtor did not object to Wells's standing in her opposition to the RFS Motion, the Court notes that the Trustee's Deed Upon Sale conferred standing on Wells for purposes of the RFS Motion. *In re Pak*, 2011 WL 7145763 (9th Cir. BAP (Cal.) 2011) (A party seeking relief from the stay "need only establish that it has a colorable claim to enforce a right against property of the estate.". A showing by a party that it is a person entitled to enforce the note at issue or that it holds some ownership or other interest in the note translates to a colorable claim.).

REQUEST TO SET ASIDE THE FORECLOSURE SALE

Section V of the Motion seeks an order setting aside the foreclosure sale. However, when the Court granted Wells's RFS Motion, it specifically granted the request for annulment of the stay to validate the postpetition actions of Wells in purchasing the Property and in recordation of the Trustee's Deed Upon Sale. *In re Fjeldsted*, 293 B.R. 12, 21 (9th Cir. BAP 2003) (holding that the bankruptcy court's authority to make exceptions to the general operation of the stay includes authority to annul the stay thereby providing retroactive relief, which, if granted, moots any issue as to whether the violating sale was void because, then, there would have been no actionable stay violation.).

TENTATIVE RULING

Based on the foregoing, the Court is inclined to DENY the Motion in its entirety.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Conchita C Ang

Represented By
Richard W Snyder

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Movant(s):

Conchita C Ang

Represented By
Richard W Snyder

Trustee(s):

Rod Danielson (TR)

Pro Se

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6:11-39340 Gary Lee Powell and Veronica Ellen Powell

Chapter 13

#2.00 Motion to Reopen Chapter 13 Case

EH__

Docket 94

***** VACATED *** REASON: ORDER ENTERED 11/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gary Lee Powell

Represented By
Alfred J Verdi

Joint Debtor(s):

Veronica Ellen Powell

Represented By
Alfred J Verdi

Movant(s):

Gary Lee Powell

Represented By
Alfred J Verdi

Veronica Ellen Powell

Represented By
Alfred J Verdi

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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6:12-21385 John Raymond Elbers and Nancy Ann Elbers

Chapter 13

#3.00 Motion for Disgorgement of Attorneys' Fees

Also #4

EH__

Docket 123

Tentative Ruling:

12/14/2017

BACKGROUND

On May 8, 2012, John and Nancy Elbers (collectively, "Debtors") filed their petition for chapter 13 relief. Amrane Cohen is the duly appointed chapter 13 trustee ("Trustee"). At the inception of the case, the Debtors were represented by Samuel Kelsall ("Kelsall"). On behalf of the Debtors, Kelsall filed the petition and took various actions in the case on behalf of the Debtors, including prosecution of a motion to avoid lien through an evidentiary hearing. The Trustee's records indicate that Kelsall incurred and received \$12,000 in total for his bankruptcy services on behalf of the Debtors.

On November 14, 2017, the Debtors filed a Motion For Sanctions/Disgorgement of Attorneys' Fees re Samuel Kelsall (the "Motion"). The Motion asserts that:

1. Kelsall received \$1,460 from Hyatt Legal Plans ("Hyatt") on behalf of the Debtors, and that check is dated August 17, 2012 (the "Hyatt Payment");
2. Kelsall received an additional \$40 from Hyatt which Kelsall asserts was for a consultation;
3. Kelsall filed a Disclosure of Compensation of Attorney for Debtor on May 8, 2012;
4. Kelsall did not file a supplement to his disclosed compensation at any time during the pendency of the case; and

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5. At a hearing on August 17, 2012, on a Trustee's Motion to Dismiss, the Debtors represented to the Trustee that Kelsall had received an additional \$1,500 from Hyatt which Kelsall had failed to disclose.

Based on the alleged nondisclosure by Kelsall of the Hyatt Payment, the Trustee seeks an order requiring him to disgorge \$13,500 (or the total amount paid by the Debtors for the bankruptcy-related services). The requested disgorgement is sought under FRBP 2016(b) which requires disclosure of compensation and supplemental statements regarding amounts paid but not previously disclosed.

On December 5, 2017, Kelsall filed opposition to the Motion ("Opposition"). As regards the merits of the Motion, Kelsall asserts that the Trustee's evidence of the Hyatt Payment is deficient in that the records produced by Hyatt are not accompanied by a record or other documentation indicating which case the payment was made on (i.e. does not identify the Debtors or their case). Kelsall further argues that the numbers do not add up. In support, he asserts that the fee for a couples' bankruptcy filing would be a total of \$1,500, not including the additional \$40 for the consultation. Thus, the check for \$1,460 plus the \$40 consultation fee cannot have been for payment towards the Debtors' case because the actual amount owed by Hyatt on behalf of the Debtors would have been \$1,500 plus \$40.

In reply to Kelsall, the Trustee notes that Kelsall has indicated he cannot identify on whose behalf the Hyatt Payment was made. The Trustee argues that Kelsall's response further compounds the problems identified in the Motion because it demonstrates Kelsall's failure to properly account for funds received by his firm on behalf of his clients as required by the California Rules of Professional Conduct.

DISCUSSION

There is no legal dispute regarding the applicability of FRBP 2016. Instead, the instant matter is solely a factual dispute regarding whether or not Kelsall received the Hyatt Payment on behalf of the Debtors which would have triggered his duty to disclose compensation. Kelsall disputes that he received funds from Hyatt on behalf of the Debtors. Although Kelsall is correct that the check proffered by the Trustee does not identify the Debtors on the check, he does not provide evidence to indicate

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that the check was definitively received by his office on behalf of other clients. Moreover, the evidence indicates that the check was issued in 2012. Thus, several years have lapsed in the interim and the Trustee correctly points out that during that time it was Kelsall's duty to properly account for the Hyatt Payment. Finally, the letter from Hyatt dated April 26, 2017 provides evidence the funds were paid to Kelsall (and Kelsall has failed to object to this evidence). As such, Kelsall failed in his duty to disclose all compensation received.

TENTATIVE RULING

Based on the foregoing, the Court is inclined GRANT the Motion and order disgorgement.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

John Raymond Elbers Pro Se

Joint Debtor(s):

Nancy Ann Elbers Pro Se

Movant(s):

Amrane (RS) Cohen (TR) Represented By
Amrane (RS) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR) Represented By
Amrane (RS) Cohen (TR)

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6:12-21385 John Raymond Elbers and Nancy Ann Elbers

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#4.00 Objection to Notice of Intent to File Trustee's Final Report and Obtain Discharge of the Trustee

Also #3

EH__

Docket 118

Tentative Ruling:

12/14/2017

BACKGROUND

As a threshold matter, the Court incorporates and takes judicial notice of the pleadings filed in connection with Docket No. 123, the Trustee's Motion for Disgorgement, and of the factual allegations made therein as they may regard the instant matter.

On September 26, 2017, the Trustee filed his Notice of Intent to File Trustee's Final Report and Account (the "Notice"). On October 25, 2017, the Debtors filed their objection to the Notice ("Objection"). The Debtors' objection specifically argues that (1) Kelsall's fees received in the case exceeded reasonable and customary fees and should not have been awarded, (2) Debtors did not receive service by mail (purportedly of the Fee Applications) filed by Kelsall and therefore did not have an opportunity to object, and (3) that Kelsall failed to disclose the \$1,500 received from Hyatt on behalf of the Debtors. Based on these allegations, the Debtors seek disgorgement.

DISCUSSION

As a threshold matter, the Debtors' Objection is not properly before the Court because the Debtors are seeking affirmative relief from Mr. Kelsall in an objection to the Trustee's Notice of Intent to File his Final Report. However, given that Mr. Kelsall filed a response and that the Debtors are in pro per, the Court will briefly

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address the arguments made.

Chapter 13

The mailbox rule provides that the proper and timely mailing of a document raises a rebuttable presumption that the document has been received by the addressee in the usual time. It is a settled feature of the federal common law. *Hagner v. United States*, 285 U.S. 427, 430, 52 S.Ct. 417, 76 L.Ed. 861 (1932); *Rosenthal v. Walker*, 111 U.S. 185, 193, 4 S.Ct. 382, 28 L.Ed. 395 (1884); *Lewis v. United States*, 144 F.3d 1220, 1222 (9th Cir.1998).

Because the common law mailbox rule operates as a rebuttable presumption, the factfinder must determine whether Mr. Kelsall has presented sufficient evidence of mailing to invoke the presumption of receipt and, if so, whether the Debtors have presented sufficient evidence of non-receipt to rebut the presumption. *Schikore v. BankAmerica Supplemental Ret. Plan*, 269 F.3d 956, 963 (9th Cir. 2001).

Here, Mr. Kelsall has provided Ex. 10, the Application for Supplemental Fees, Ex. 12, the Notice of Hearing on Application for Payment of Interim or Final Fees, both with corresponding proofs of service. Both documents are signed under penalty of perjury and contain attached mailing lists which indicate that the Debtors were served at their residence. In contrast, the Debtors have provided no evidence to controvert the proofs of service. As such, the Court must find that the Debtors have failed to rebut Mr. Kelsall's evidence of mailing and therefore that the Debtors are presumed to have received Mr. Kelsall's applications for fees.

Next, having found that the Debtors received proper notice and service of Mr. Kelsall's fee applications, the Debtors cannot now object to Mr. Kelsall's fees. The time to object to the reasonableness of fees was when they received notice of the applications. As such, the Court need not address whether Mr. Kelsall's fees were reasonable.

Finally, the Debtors have raised the issue of Mr. Kelsall's nondisclosure of the \$1,500 in payments from Hyatt. This matter is being concurrently addressed by the

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Trustee's Motion for Disgorgement. As such, there is no need to address the matter further on this Objection.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to **OVERRULE** the Debtor's Objection as not properly brought before the Court, and as an alternate grounds, on the merits for the reasons stated herein.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

John Raymond Elbers	Pro Se
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Joint Debtor(s):

Nancy Ann Elbers	Pro Se
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Trustee(s):

Amrane (RS) Cohen (TR)	Represented By Amrane (RS) Cohen (TR)
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6:12-36522 Jacquelyn Anna Palmer

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#5.00 CONT Motion Re: Objection to Claim #7 by Claimant Tidewater Finance Company T/A Tidewater Motor Credit & Tidewater Credit Services

From: 11/9/17

Also #6

EH__

Docket 76

Tentative Ruling:

11/09/2017

Background:

On November 30, 2012 ("Petition Date"), Jacquelyn Anna Palmer ("Debtor") filed for chapter 13 relief. Amrane Cohen is the duly appointed chapter 13 trustee ("Trustee"). On September 27, 2017, Debtor filed her Objection to Claims # 7-1 of Tidewater Finance Company ("Claimant").

Service was proper and no opposition or response has been filed.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing

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upon a motion for relief. *Id.*

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When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *United States v. Offord Fin., Inc., (In re Medina)*, 205 B.R. 216,222 (9th Cir. BAP 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *Ashford v. Consol. Pioneer Mort. (In re Consol. Pioneer Mort.)*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. *Lundell*, 223 F.3d at 1039; *Holm*, 931 F.2d at 623.

Analysis:

The Debtor objects only to the "secured" portion of Claim No. 7-1. Specifically, the Debtor asserts, without legal citation or authority, that because she "gave her furniture to a co-worker who had lost everything in a fire" and is "no longer in possession of the furniture" the secured amount should be disallowed.

Tentative Ruling

Having failed to provide legal authority for the proposition that the gifting of property subject to a security interest suffices to extinguish such lien, the tentative ruling is that the Objection be OVERRULED.

APPEARANCES REQUIRED.

Party Information

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CONT... Jacquelyn Anna Palmer

Chapter 13

Debtor(s):

Jacquelyn Anna Palmer

Represented By
Steven A Alpert

Movant(s):

Jacquelyn Anna Palmer

Represented By
Steven A Alpert

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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6:12-36522 Jacquelyn Anna Palmer

Chapter 13

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

Also #5

EH__

Docket 79

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jacquelyn Anna Palmer

Represented By
Steven A Alpert

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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6:12-37439 Victor M. Menez and Marilee J. Menez

Chapter 13

#7.00 Motion under Local Bankruptcy Rule 3015-1 (n) and (w) to modify plan or suspend plan payments

Also #8

EH__

Docket 66

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victor M. Menez

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Marilee J. Menez

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Movant(s):

Victor M. Menez

Represented By
Dale Parham - INACTIVE -
Dale Parham - INACTIVE -
Michael Smith
Michael Smith
Sundee M Teeple
Sundee M Teeple

Marilee J. Menez

Represented By

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CONT... Victor M. Menez and Marilee J. Menez

Chapter 13

Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

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6:12-37439 Victor M. Menez and Marilee J. Menez

Chapter 13

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

From: 11/9/17

Also #7

EH__

Docket 62

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Victor M. Menez

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Marilee J. Menez

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

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6:12-15987 James W Smith, Sr. and Cynthia Smith

Chapter 13

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

From: 5/11/17, 7/20/17, 7/27/17, 10/19/17

EH _____

Docket 57

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James W Smith Sr.

Represented By
Jenny L Doling

Joint Debtor(s):

Cynthia Smith

Represented By
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

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6:12-23206 Donald Vinson Frantz and Donna Peck Frantz

Chapter 13

#10.00 CONT Trustee's Motion to Dismiss Case Due to Material Default

From: 8/17/17, 10/19/17

EH__

Docket 116

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
12/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donald Vinson Frantz

Represented By
Jenny L Doling

Joint Debtor(s):

Donna Peck Frantz

Represented By
Jenny L Doling

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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6:12-23627 Michael L Anderson

Chapter 13

#11.00 CONT Trustee's Motion to Dismiss Case Due to Material Default or to Reconvert Case to Chapter 7

From: 9/14/17, 11/9/17

EH__

Docket 154

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael L Anderson

Represented By
Javier H Castillo

Movant(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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6:12-32682 Mark A Rowley and Catherine C Rowley

Chapter 13

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

EH__

Docket 104

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
12/11/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark A Rowley

Represented By
Tate C Casey

Joint Debtor(s):

Catherine C Rowley

Represented By
Tate C Casey

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

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6:12-33019 Michael Wayne Branning

Chapter 13

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

From: 10/19/17

EH__

Docket 67

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Wayne Branning

Represented By
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

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6:12-33568 James A. Omoto and Margarita Omoto

Chapter 13

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

EH__

Docket 45

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
12/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James A. Omoto

Represented By
Carey C Pickford

Joint Debtor(s):

Margarita Omoto

Represented By
Carey C Pickford

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

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6:12-34376 Sean Paul Crandell and Gina Rosario Crandell

Chapter 13

#15.00 Motion and Verified Motion for Order Dismissing Chapter 13 Proceeding, Failure to complete the plan within its terms

EH__

Docket 76

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
12/13/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sean Paul Crandell

Represented By
Arnold H Wuhrman

Joint Debtor(s):

Gina Rosario Crandell

Represented By
Arnold H Wuhrman

Trustee(s):

Amrane (RS) Cohen (TR)

Pro Se

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6:13-23032 David R. Roberts and Crystal A Roberts

Chapter 13

#16.00 Motion to Reconsider Dismissal of Case

EH__

Docket 75

Tentative Ruling:

12/14/17

On Trustee's recommendation, the Motion to Vacate Dismissal is granted on the conditions set forth in the Trustee's Comments requiring certification by Debtors' attorney that he is holding the total amount of funds necessary to bring the plan current.

Party Information

Debtor(s):

David R. Roberts

Represented By
Javier H Castillo

Joint Debtor(s):

Crystal A Roberts

Represented By
Javier H Castillo

Movant(s):

David R. Roberts

Represented By
Javier H Castillo

Crystal A Roberts

Represented By
Javier H Castillo

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-14501 Julie Lynn Salazar

Chapter 13

#17.00 Motion RE: Objection to Claim Number 6 by Claimant Winegardner Masonry

Also #8

EH__

Docket 46

Tentative Ruling:

12/14/17

Per the consent of the parties, which was informally provided to the Court via electronic mail, the hearing on the Objection to Claim is CONTINUED to 12/21/17 at 12:30 p.m.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Julie Lynn Salazar

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Julie Lynn Salazar

Represented By
Jenny L Doling
Summer M Shaw

Julie Lynn Salazar

Pro Se

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-14501 Julie Lynn Salazar

Chapter 13

#18.00 CONT Confirmation of Chapter 13 Plan

From: 7/6/17, 10/5/17, 10/26/17

Also #17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julie Lynn Salazar

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-18131 Ramon Gabriel Alvarez

Chapter 13

#19.00 CONT Confirmation of Chapter 13 Plan

From: 11/2/17, 11/30/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ramon Gabriel Alvarez

Represented By
Devin Sawdayi

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-18210 Jorge Manuel Azmitia and Yoshiko Azmitia

Chapter 13

#20.00 CONT Confirmation of Chapter 13 Plan

From: 11/2/17, 11/30/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jorge Manuel Azmitia

Represented By
Nicholas M Wajda

Joint Debtor(s):

Yoshiko Azmitia

Represented By
Nicholas M Wajda

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-18388 Gregorio Orozco Sotelo

Chapter 13

#21.00 CONT Confirmation of Chapter 13 Plan

From: 11/16/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gregorio Orozco Sotelo

Represented By
Lisa F Collins-Williams

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-18643 Daniel Robert Shapiro

Chapter 13

#22.00 CONT Confirmation of Chapter 13 Plan

From: 11/30/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Daniel Robert Shapiro

Pro Se

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-18653 Martha Mata

Chapter 13

#23.00 CONT Confirmation of Chapter 13 Plan

From: 11/30/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martha Mata

Represented By
Inez Tinoco-Vaca

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-18872 Rafeek Nehman Hamada

Chapter 13

#24.00 CONT Confirmation of Chapter 13 Plan

From: 11/30/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rafeek Nehman Hamada

Represented By
Eric Bensamochan

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19020 Jon Peter Rutherig

Chapter 13

#25.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 11/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jon Peter Rutherig

Pro Se

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19065 Martin Warren

Chapter 13

#26.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 11/20/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martin Warren

Pro Se

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19083 Juan Hernandez

Chapter 13

#27.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juan Hernandez

Represented By
Rebecca Tomilowitz

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19098 Dane Harmon

Chapter 13

#28.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 12/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dane Harmon

Represented By
Timothy S Huyck

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19112 Brian Anthony Paciorkowski and Donna Ann Paciorkowski

Chapter 13

#29.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brian Anthony Paciorkowski

Represented By
Kristin R Lamar

Joint Debtor(s):

Donna Ann Paciorkowski

Represented By
Kristin R Lamar

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19154 Ernesto Sanchez

Chapter 13

#30.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ernesto Sanchez

Represented By
Jerry Rulsky

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19187 Antonio Silveria Lourenco

Chapter 13

#31.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Antonio Silveria Lourenco

Represented By
Neil R Hedtke

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19200 Samuel Siggson and Kellie Jonay Siggson

Chapter 13

#32.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Samuel Siggson

Represented By
Terrence Fantauzzi

Joint Debtor(s):

Kellie Jonay Siggson

Represented By
Terrence Fantauzzi

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19207 Deborah Cuellar

Chapter 13

#33.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Deborah Cuellar

Represented By
Natalie A Alvarado

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19236 Kenneth Collier

Chapter 13

#34.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 11/27/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth Collier

Pro Se

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19253 Arnel L Ganzon

Chapter 13

#35.00 Confirmation of Chapter 13 Plan

Also #36

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arnel L Ganzon

Pro Se

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19253 Arnel L Ganzon

Chapter 13

#36.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

MOVANT: ARNEL L. GANZON

Also #35

EH__

Docket 11

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arnel L Ganzon	Pro Se
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Movant(s):

Arnel L Ganzon	Pro Se
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Trustee(s):

Rod Danielson (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19281 Anthony J McPike

Chapter 13

#37.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anthony J McPike

Represented By
Dana Travis

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19291 Carolyn Maxine Bodden

Chapter 13

#38.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carolyn Maxine Bodden

Represented By
Edward G Topolski

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19300 Jennifer Marie Silva

Chapter 13

#39.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jennifer Marie Silva

Represented By
Raymond Perez

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19337 Sandra Lorena Parra

Chapter 13

#40.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sandra Lorena Parra

Represented By
Christopher Hewitt

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19365 Jacqueline Hurtado

Chapter 13

#41.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 11/17/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jacqueline Hurtado

Represented By
Rhonda Walker

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:32 PM

6:17-19377 Sheryl Welsh

Chapter 13

#42.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sheryl Welsh

Represented By
Hayk Grigoryan

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:13-11344 Maria Aguilar

Chapter 13

#43.00 Trustee's Motion to Dismiss Case (Delinquency)

EH__

Docket 55

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria Aguilar

Represented By
Abel H Fernandez

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:13-13052 Charles R Campbell, II and Ruth Urie-Campbell

Chapter 13

#44.00 Trustee's Motion to Dismiss Case

EH__

Docket 41

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles R Campbell II

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Ruth Urie-Campbell

Represented By
Dale Parham - INACTIVE -
Michael Smith
Sundee M Teeple

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:13-13116 Juana Judith Mejia

Chapter 13

#45.00 CONT Trustee's Motion to Dismiss Case

From: 11/30/17

EH__

Docket 117

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juana Judith Mejia

Represented By
Javier H Castillo

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:13-28666 Mildred Goodridge Crawford

Chapter 13

#46.00 Trustee's Motion to Dismiss Case (Delinquency)

EH__

Docket 197

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mildred Goodridge Crawford

Represented By
Michael Smith
Craig K Streed
Sundee M Teeple

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:14-19524 Donnita M. Oliver

Chapter 13

#47.00 Trustee's Motion to Dismiss Case

EH__

Docket 69

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
12/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donnita M. Oliver

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:14-20076 Delfina Ramos Hernandez

Chapter 13

#48.00 Trustee's Motion to Dismiss Case

EH__

Docket 74

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
12/11/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Delfina Ramos Hernandez

Represented By
Edward G Topolski

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:14-22147 Thomas Rodriguez Alcala

Chapter 13

#49.00 CONT Trustee's Motion to Dismiss Case

From: 11/2/17

EH__

Docket 67

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
12/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Rodriguez Alcala

Represented By
Halli B Heston

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:14-23388 Jose N Recinos and Patricia Recinos

Chapter 13

#50.00 CONT Trustee's Motion to Dismiss Case

From: 11/9/17, 11/30/17

EH__

Docket 245

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
12/5/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose N Recinos

Represented By
Michael Smith
Sundee M Teeple

Joint Debtor(s):

Patricia Recinos

Represented By
Michael Smith
Sundee M Teeple

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:14-24807 Bryan K. Harrison and Dawn Harrison

Chapter 13

#51.00 CONT Trustee's Motion to Dismiss Case

From: 10/26/17, 11/30/17

EH__

Docket 98

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
12/12/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bryan K. Harrison

Represented By
April E Roberts

Joint Debtor(s):

Dawn Harrison

Represented By
April E Roberts

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:16-12347 Jose Luis Ceballos and Edelmira Castro

Chapter 13

#52.00 Trustee's Motion to Dismiss Case

EH__

Docket 95

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose Luis Ceballos

Represented By
David Lozano

Joint Debtor(s):

Edelmira Castro

Represented By
David Lozano

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:16-15304 Fabiola Puttre

Chapter 13

#53.00 Trustee's Motion to Dismiss Case

EH__

Docket 40

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fabiola Puttre

Represented By
Paul Y Lee

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:16-18526 Ana M. Oliver

Chapter 13

#54.00 Trustee's Motion to Dismiss Case (Delinquency)

Also #55

EH__

Docket 35

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ana M. Oliver

Represented By
Michael Smith
Sundee M Teeple
Craig K Streed

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:16-18526 Ana M. Oliver

Chapter 13

#55.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 11/13/17

Also #54

EH__

Docket 24

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/30/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ana M. Oliver

Represented By
Michael Smith
Sundee M Teeple
Craig K Streed

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:16-18546 Alexis I Barahona

Chapter 13

#56.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 11/13/17, 11/30/17

EH__

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alexis I Barahona

Represented By
Christopher J Langley

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:16-20003 Pamula Raye St Dennis

Chapter 13

#57.00 Trustee's Motion to Dismiss Case

EH__

Docket 103

***** VACATED *** REASON: CONTINUED TO 12/21/17 AT 12:30 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pamula Raye St Dennis

Represented By
Cynthia A Dunning

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:16-20329 Gabriel Cruz

Chapter 13

#58.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 8/31/17, 10/5/17, 11/30/17

EH__

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gabriel Cruz

Represented By
Christopher J Langley

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:17-10702 Miriam Louise Preisendanz

Chapter 13

#59.00 CONT Trustee's Motion to Dismiss Case

From: 11/16/17

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Miriam Louise Preisendanz

Represented By
Danny K Agai

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:17-10742 William Fuentes and Martha C Orozco de Fuentes

Chapter 13

#60.00 CONT Trustee's Motion to Dismiss Case

From: 11/9/17

EH__

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William Fuentes

Represented By
Marlin Branstetter

Joint Debtor(s):

Martha C Orozco de Fuentes

Represented By
Marlin Branstetter

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:17-11131 Bruce Howard Ruggles and Ann Marie Ruggles

Chapter 13

#61.00 CONT Trustee's Motion to Dismiss Case

From: 11/16/17

EH__

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bruce Howard Ruggles

Represented By
John F Brady

Joint Debtor(s):

Ann Marie Ruggles

Represented By
John F Brady

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:17-12420 Frank Castodio

Chapter 13

#62.00 CONT Trustee's Motion to Dismiss Case

From: 11/9/17

EH__

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Castodio

Represented By
Lauren Rode

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:17-12794 Katina Deneen Edwards

Chapter 13

#63.00 Trustee's Motion to Dismiss Case

EH__

Docket 32

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/20/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Katina Deneen Edwards

Represented By
Paul Y Lee

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:17-14150 Kaleo Mehia Roque Leopoldo and Andrea Ann Leopoldo

Chapter 13

#64.00 Trustee's Motion to Dismiss Case (Delinquency)

EH__

Docket 45

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kaleo Mehia Roque Leopoldo

Represented By
Nicholas M Wajda

Joint Debtor(s):

Andrea Ann Leopoldo

Represented By
Nicholas M Wajda

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:17-14868 Lawrence D Leavingston, Sr.

Chapter 13

#65.00 Trustee's Motion to Dismiss Case

EH__

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lawrence D Leavingston Sr.

Represented By
Gilbert A Diaz

Trustee(s):

Rod Danielson (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:17-15102 Gwendolyn Washington

Chapter 13

#66.00 CONT Trustee's Motion to Dismiss Case

From: 11/30/17

EH__

Docket 36

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
12/12/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gwendolyn Washington

Represented By
Julie J Villalobos

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:17-15251 Susan E Duynstee

Chapter 13

#67.00 Trustee's Motion to Dismiss Case

EH__

Docket 34

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
12/12/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Susan E Duynstee

Represented By
Paul Y Lee

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 14, 2017

Hearing Room 303

12:33 PM

6:17-16037 Nadia M. Lipscomb

Chapter 13

#68.00 Trustee's Motion to Dismiss Case

EH__

Docket 24

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nadia M. Lipscomb

Represented By
James D. Hornbuckle

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:16-20874 Irma Hernandez

Chapter 13

#1.00 CONT Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 14352 La Brisa Road, Victorville, CA 92392

MOVANT: U.S. BANK N.A.

From: 12/5/17

EH__

Docket 32

Tentative Ruling:

12/5/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2 and 3. DENY alternative request under ¶ 13 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Irma Hernandez

Represented By
David T Egli

Movant(s):

U.S. Bank N.A., as trustee, on behalf

Represented By
Daniel K Fujimoto
Caren J Castle

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

CONT... Irma Hernandez

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-10101 Rizal Ligayo

Chapter 13

#2.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2015 Toyota Rav4 (VIN 2T3WFREV1FW138281)

MOVANT: TOYOTA MOTOR CREDIT CORPORATION

EH__

Docket 30

Tentative Ruling:

12/19/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). DENY request for relief from the automatic under § 362(d)(2) because the Court does not have evidence that the vehicle is not necessary for an effective reorganization. DENY relief from § 1301(a) stay for failure to serve co-debtor. GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Rizal Ligayo

Represented By
Paul Y Lee

Movant(s):

Toyota Motor Credit Corporation,

Represented By
Austin P Nagel

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

CONT... Rizal Ligayo

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-12392 Mary Tejuoso Chapin

Chapter 7

#3.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 24441 Fiji Dr

MOVANT: U.S. BANK NATIONAL ASSOCIATION

EH__

Docket 46

Tentative Ruling:

12/19/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3, and 12.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Mary Tejuoso Chapin

Represented By
David A Akintimoye

Movant(s):

U.S. Bank National Association, as

Represented By
Nancy L Lee

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-15102 Gwendolyn Washington

Chapter 13

#4.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2010 MERCEDES-BENZ E Class Sedan 4D E350

MOVANT: EXETER FINANCE LLC

EH__

Docket 42

Tentative Ruling:

12/19/2017

Service is Proper

Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2). GRANT relief from § 1301(a) co-debtor stay. GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Gwendolyn Washington

Represented By
Julie J Villalobos

Movant(s):

Exeter Finance LLC

Represented By
Bret D. Allen

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-16455 Elizabeth Jucaban Tuason

Chapter 13

#5.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1695 La Praix Street, Highland, CA 92346-4678

MOVANT: WELLS FARGO BANK N.A.

EH__

Docket 34

Tentative Ruling:

12/19/2017

Service is Proper

Opposition: Yes

Movant to confirm cure, and parties to discuss adequate protection.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Elizabeth Jucaban Tuason

Represented By
Brad Weil

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Darlene C Vigil

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-17255 Pedro Montes and Bertha Alicia Montes

Chapter 7

#6.00 Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1269 N Edwards St Apt 8, Redlands CA 92374

MOVANT: WELLS FARGO BANK NA

EH__

Docket 9

Tentative Ruling:

12/19/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3, and 12.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Pedro Montes

Represented By
James Geoffrey Beirne

Joint Debtor(s):

Bertha Alicia Montes

Represented By
James Geoffrey Beirne

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Austin P Nagel

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

CONT... Pedro Montes and Bertha Alicia Montes

Chapter 7

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-17303 Eric Jabbar Norwood and Linda Lee Norwood

Chapter 7

#7.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2006 Ebbtide Mystique 26 Boat (Hull No. ETC00411K506) and 2006 Extreme Trailer (VIN 5DBBB29266R000015)

MOVANT: SYSTEMS & SERVICES TECHNOLOGIES, INC.

EH__

Docket 22

Tentative Ruling:

12/19/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Eric Jabbar Norwood

Represented By
Marc A Duxbury

Joint Debtor(s):

Linda Lee Norwood

Represented By
Marc A Duxbury

Movant(s):

Systems & Services Technologies,

Represented By
Austin P Nagel

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

CONT... Eric Jabbar Norwood and Linda Lee Norwood

Chapter 7

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-17402 Thomas Lee Abercrombie and Rebecca Anne Abercrombie Chapter 13

#8.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2005 Chevrolet Avalanche

MOVANT: DRIVE TIME CARSALES COMPANY LLC

EH__

Docket 19

Tentative Ruling:

12/19/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). DENY request for relief from the automatic stay under § 362(d)(2) because the Court has not been provided with any evidence that this vehicle is not necessary to an effective reorganization. GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY request under ¶ 3 for lack of cause shown.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Thomas Lee Abercrombie

Represented By
Rabin J Pournazarian

Joint Debtor(s):

Rebecca Anne Abercrombie

Represented By
Rabin J Pournazarian

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

CONT... Thomas Lee Abercrombie and Rebecca Anne Abercrombie

Chapter 13

Movant(s):

DriveTime Carsales Company LLC

Represented By
Caren J Castle

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-18582 Michael Allen Cushman

Chapter 7

#9.00 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 62323 Calle Los Amigos, Joshua Tree, CA 92252

MOVANT: THE BANK OF NEW YORK MELLON

EH__

Docket 14

Tentative Ruling:

12/19/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT requests under ¶¶ 2, 3, and 12. DENY alternative request under ¶ 13 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Michael Allen Cushman

Represented By
Brian J Soo-Hoo

Movant(s):

THE BANK OF NEW YORK

Represented By
Angie M Marth

Trustee(s):

John P Pringle (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-18653 Martha Mata

Chapter 13

#10.00 Motion for relief from the automatic stay with supporting declarations
PERSONAL PROPERTY RE: 2016 Ford F250 4x4, VIN:
1FT7W2BT9GEB24930

MOVANT: TD AUTO FINANCE LLC

EH__

Docket 17

Tentative Ruling:

12/19/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Martha Mata

Represented By
Inez Tinoco-Vaca

Movant(s):

TD Auto Finance LLC

Represented By
Sheryl K Ith

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-18977 Marisela Hernandez

Chapter 7

#11.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 HYUNDAI SONATA

MOVANT: WELLS FARGO BANK

EH__

Docket 9

Tentative Ruling:

12/19/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶¶ 2. DENY alternative request under ¶ 11 as moot.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Marisela Hernandez

Represented By
Brian J Soo-Hoo

Movant(s):

Wells Fargo Bank, N.A. dba Wells

Represented By
Sheryl K Ith

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-19098 Dane Harmon

Chapter 13

#12.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: (2016 CHEVROLET SILVERADO VIN # 1GC1KWE82GF198765)

MOVANT: ALLY FINANCIAL INC.

CASE DISMISSED: 12/13/17

EH__

Docket 16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dane Harmon

Represented By
Timothy S Huyck

Movant(s):

Ally Financial Inc.

Represented By
Adam N Barasch

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-19112 Brian Anthony Paciorkowski and Donna Ann Paciorkowski Chapter 13

#13.00 Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Rockwood Ultra Lite Series M-8312SS Travel Trailer

MOVANT: CORPORATE AMERICA FAMILY CREDIT UNION

EH__

Docket 16

Tentative Ruling:

12/19/2017

Service is Proper
Opposition: None

The Court is inclined to GRANT relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). GRANT waiver of 4001(a)(3) stay. GRANT request under ¶ 2.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Brian Anthony Paciorkowski

Represented By
Kristin R Lamar

Joint Debtor(s):

Donna Ann Paciorkowski

Represented By
Kristin R Lamar

Movant(s):

Corporate America Family Credit

Represented By
Scott S Weltman

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

CONT... Brian Anthony Paciorkowski and Donna Ann Paciorkowski

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-19611 Larry Gene Hannah and Susan Harris Hannah

Chapter 13

#14.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 15371 Mondamon Road. Apple Valley, CA 92307

MOVANT: LARRY G HANNAH AND SUSAN H. HANNAH

EH__

Docket 13

Tentative Ruling:

12/19/2017

Service: Proper
Opposition: None

The Court having reviewed the motion, and Debtor having presented clear and convincing evidence sufficient to rebut the presumption that the case was not filed in good faith, the Court is inclined to GRANT the motion, IMPOSING the automatic stay as to all creditors.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Larry Gene Hannah

Represented By
Todd L Turoci

Joint Debtor(s):

Susan Harris Hannah

Represented By
Todd L Turoci

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

CONT... Larry Gene Hannah and Susan Harris Hannah

Chapter 13

Movant(s):

Larry Gene Hannah

Represented By
Todd L Turoci

Susan Harris Hannah

Represented By
Todd L Turoci

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-19628 Alejandro Salinas, Jr.

Chapter 13

#15.00 Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 6386 Stable Falls Ave.

MOVANT: ALEJANDRO SALINAS JR.

EH__

Docket 12

Tentative Ruling:

12/19/2017

Service: Improper

Opposition: None

The Court has reviewed the motion and notes that service is improper. Specifically, creditors, including the main secured creditor, were served at PO boxes, instead of pursuant to FRBP 7004. Therefore, the Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Alejandro Salinas Jr.

Represented By
Nicholas M Wajda

Movant(s):

Alejandro Salinas Jr.

Represented By
Nicholas M Wajda

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-19868 Barbara Rammell

Chapter 13

#16.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Residence located at 40077 Cascada Street, Murrieta, CA 92563

MOVANT: CARRINGTON MORTGAGE SERVICES LLC

EH__

Docket 15

Tentative Ruling:

12/19/2017

Service: Improper
Opposition: None

First, the Court notes that notice of the motion was improper. The Court's self-calendaring procedures allow a motion to continue the automatic stay to be set on shortened notice only if fourteen days notice is provided to creditors. Here, however, Debtor did not provide fourteen days notice. Additionally, pursuant to § 362(c)(3)(C) (i)(II)(cc) this case was presumptively filed in bad faith as to all creditors, and Debtor has not provided clear and convincing evidence to the contrary. Specifically, Debtor's previous Chapter 13 case was dismissed less than one year into the plan for failure to make plan payments, and Debtor has not provided any evidence that she is currently in a better financial situation. Therefore, the Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Barbara Rammell

Represented By
Carey C Pickford

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

CONT... Barbara Rammell

Chapter 13

Movant(s):

Barbara Rammell

Represented By

Carey C Pickford

Carey C Pickford

Carey C Pickford

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-19890 Katrina Renee McDowell

Chapter 13

#17.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Residence located at: 48309 Garbo Dr Indio, CA 92201 & 2009 Honda Civic LX ; Decl of Katrina Renee McDowell

MOVANT: KATRINA RENEE MCDOWELL

EH__

Docket 12

Tentative Ruling:

12/19/2017

Service: Proper
Opposition: None

The Court is inclined to DENY the motion. The Court notes that pursuant to § 362(c)(3)(C)(i)(II)(cc) this case was presumptively filed in bad faith as to all creditors, and Debtor has not provided clear and convincing evidence to the contrary. Specifically, Debtor's previous Chapter 13 case was dismissed approximately one year into the plan for failure to make plan payments. Debtor has generally averred that her income has increased and that she is capable of making plan payments, and that her income will increase once she passes the state bar examination. Such a general assertion, however, fails to satisfy the "clear and convincing" standard of § 362(c)(3)(C).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Katrina Renee McDowell

Represented By
Jenny L Doling

Movant(s):

Katrina Renee McDowell

Represented By
Jenny L Doling

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

CONT... Katrina Renee McDowell

Chapter 13

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

6:17-20029 Simon E. Williams

Chapter 7

#18.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 79039 Lake Club Dr, Bermuda Dunes, CA 92203; Decl of Simon E Williams

MOVANT: SIMON E WILLIAMS

EH__

Docket 4

Tentative Ruling:

12/19/2017

Service: Proper
Opposition: None

The Court is inclined to DENY the motion. First, notice to the law firm that represented the secured creditor (the primary party at whom the motion is directed) does not include the handling lawyers' names. As such notice is problematic as it will be delayed getting into the proper hands. Second, the prior case was not dismissed because of an ordinary payment default, as the motion implies, but because of failure to turn over tax refunds. Third, Debtor does not need the stay to seek a loan modification. Last, any equity in the Debtor's residence will be recovered, on sale by the Trustee (not the Debtor) for the benefit of the estate, and the Trustee has not joined this request. Thus, Debtor has failed to rebut the presumption of lack of good faith as to U.S. Bank pursuant to § 362(c)(3)(C)(ii).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Simon E. Williams

Represented By
Jenny L Doling

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

10:00 AM

CONT... Simon E. Williams

Chapter 7

Movant(s):

Simon E. Williams

Represented By
Jenny L Doling
Jenny L Doling

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

11:00 AM

6:14-11765 Denise Barrow

Chapter 7

#19.00 CONT OSC re Order To Docket Information In Support Of Bodily Detention Request Under Seal; And order Issuing Bodily Detention Request for Marla Perez

From: 8/24/17, 9/14/17

EH__

Docket 68

***** VACATED *** REASON: ORDER ENTERED 12/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Denise Barrow

Pro Se

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#20.00 Application for Compensation of Final Fees and/or Expenses with proof of service for Fredman Lieberman Pearl LLP, Debtor's Attorney, Period: 5/11/2016 to 12/5/2016, Fee: \$278,079.00, Expenses: \$4,603.13

Also #21

EH__

Docket 306

*** VACATED *** REASON: CONTINUED TO 4/24/18 AT 2:00 P.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

Fredman Lieberman Pearl LLP

Represented By
Alan W Forsley

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn
Steven Werth

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

2:00 PM

6:16-14273 Allied Injury Management, Inc.

Chapter 11

#21.00 CONT Motion for Turnover of Property of the Estate

From: 10/24/17, 10/31/17, 11/28/17

Also #20

EH__

Docket 303

***** VACATED *** REASON: CONTINUED TO 1/30/18 AT 2:00 P.M.**

Tentative Ruling:

10/31/2017

The hearing on the Motion is continued to November 28, 2017, at 2:00 p.m.
as a holding date.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Allied Injury Management, Inc.

Represented By
Alan W Forsley

Movant(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn
Steven Werth

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian
Jason Balitzer
Victor A Sahn

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

2:00 PM

CONT...

Allied Injury Management, Inc.

Steven Werth

Chapter 11

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

Hearing Room 303

2:00 PM

6:17-19936 Auto Strap Transport, LLC

Chapter 11

#22.00 Stipulation By Auto Strap Transport, LLC and -- Notice of Motion and Motion for Order Approving Stipulation Regarding Use of Cash Collateral and Adequate Protection Between Auto Strap Transport, LLC and Nations Fund I, LLC

EH__

Docket 42

Tentative Ruling:

12/19/17

BACKGROUND

On December 1, 2017, Auto Strap Transport, LLC ("Debtor") filed a Chapter 11 voluntary petition. On the same day, Debtor filed a motion to use cash collateral and an application for a hearing on shortened notice. The Court held a hearing on Debtor's motion to use cash collateral on December 6, 2017, and, on December 14, 2017, the Court entered an order granting Debtor's motion on an interim basis. A continued hearing on Debtor's motion to use cash collateral is currently set for January 9, 2018.

Pursuant to the Court's instructions at the hearing on December 6, 2016, Debtor filed a stipulation regarding use of cash collateral and adequate protection between Debtor and Nations Fund I ("Creditor") on December 11, 2017. The deadline for opposition was December 15, 2017, and no timely opposition was received.

According to the stipulation, Creditor has a perfected security interest in all of Debtor's assets, securing a debt of \$9,930,645.47. The stipulation provides that Debtor make adequate protection payments to Creditor in the amount of \$65,000 twice a month. Furthermore, Debtor has agreed to provide Creditor with replacement

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Central District of California
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Tuesday, December 19, 2017

Hearing Room 303

2:00 PM

CONT... **Auto Strap Transport, LLC**
 liens.

Chapter 11

DISCUSSION

A. Cash Collateral

11 U.S.C. § 363(c)(1)-(2) (2010) states:

(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless-

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. § 363(a) defines cash collateral as:

cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products,

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2:00 PM

CONT...

Auto Strap Transport, LLC

Chapter 11

offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

Here, as evidenced by the stipulation presented to the Court, Creditor has consented to the use of its cash collateral. Because Creditor is a party to the stipulation, the Court declines to analyze whether Creditor is adequately protected under the standard of 11 U.S.C. § 361.

The Court notes that the stipulation between Debtor and Creditor does not waive, modify, or alter the rights of any other secured creditor. To the extent any other secured creditor has an interest in cash collateral, Debtor must secure the consent of such entity, or authorization from the Court, before using the applicable cash collateral.

TENTATIVE RULING

The Court is inclined to APPROVE the stipulation between Auto Strap Transport, LLC and Nations Fund I, LLC.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Auto Strap Transport, LLC

Represented By
Todd L Turoci

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Tuesday, December 19, 2017

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2:00 PM

CONT... Auto Strap Transport, LLC

Chapter 11

Movant(s):

Auto Strap Transport, LLC

Represented By
Todd L Turoci

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 20, 2017

Hearing Room 303

11:00 AM

6:10-16885 Dianne D. Reese

Chapter 7

#1.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 43

Tentative Ruling:

12/20/2017

No opposition has been filed.
Service was Proper.

The applications for compensation of the Trustee and Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the Applications of the associated professionals, the following administrative claims will be allowed:

Trustee Fees: \$ 2,250
Trustee Expenses: \$ 65.12

Accountant Fees: \$1,685.50
Accountant Costs: \$112.65

The applications for compensation are approved and the trustee and associated professionals may submit on the tentative.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Dianne D. Reese

Represented By
Donald S Edgar

Trustee(s):

Helen R. Frazer (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
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Wednesday, December 20, 2017

Hearing Room 303

11:00 AM

CONT... Dianne D. Reese

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 20, 2017

Hearing Room 303

11:00 AM

6:17-10546 Robert M. Rubalcaba and Brasenia Rubalcaba

Chapter 7

#2.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 37

Tentative Ruling:

12/20/2017

No opposition has been filed.
Service was Proper.

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the following administrative claims will be allowed:

Trustee Fees: \$ 2,596.30
Trustee Expenses: \$ 33.81

The TFR is approved and the trustee may submit on the tentative.

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Robert M. Rubalcaba

Represented By
Lazaro E Fernandez

Joint Debtor(s):

Brasenia Rubalcaba

Represented By
David L Nelson
Lazaro E Fernandez

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 20, 2017

Hearing Room 303

11:00 AM

CONT... Robert M. Rubalcaba and Brasenia Rubalcaba

Chapter 7

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 20, 2017

Hearing Room 303

11:00 AM

6:11-36779 HN Engineering, Inc.

Chapter 7

#3.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 194

Tentative Ruling:

12/20/17

The applications for compensation of the Trustee, Counsel for the Trustee, Accountant for the Trustee, and Special Counsel have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the Applications of the associated professionals, the following administrative claims will be allowed:

Trustee Fees: \$ 44,188.13
Trustee Expenses: \$ 1,729.67

Goe & Forsythe Fees: \$107,961 (per Stip with UST) + \$13,219 Holdback from First Fee Application
Attorney Costs: \$6,099

Accountant Fees: \$20,506
Accountant Costs: \$519.40

Special Counsel Fees: \$43,166.50
Special Counsel Costs:\$2,410.02

The applications for compensation are approved and the trustee and associated professionals may submit on the tentative.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

HN Engineering, Inc.

Represented By

**United States Bankruptcy Court
Central District of California
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Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 20, 2017

Hearing Room 303

11:00 AM

CONT... HN Engineering, Inc.

Chapter 7

Martha A Warriner

Trustee(s):

Todd A. Frealy (TR)

Represented By
Robert P Goe
Rew R Goodenow

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 20, 2017

Hearing Room 303

11:00 AM

6:16-19776 Steven A. Smelser

Chapter 7

#4.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 56

Tentative Ruling:

12/20/17

The applications for compensation of the Trustee, Counsel for the Trustee, and Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. As to the Attorney fees, the extent of work regarding the § 724 issue appears excessive, given the record provided in the Application, and the work regarding preparation of the settlement motion and agreement also appears excessive given the lack of complexity of the issues. As such the Court finds that a further reduction of \$2,000 is appropriate. Pursuant to the Trustee's Final Report and the Applications of the associated professionals, the following administrative claims will be allowed:

Trustee Fees:	\$ 3,150
Trustee Expenses:	\$ 26.91
Attorney Fees:	\$9,202.50
Attorney Costs:	\$410.04
Accountant Fees:	\$2,492.50
Accountant Costs:	\$359.32

The applications for compensation are approved and the trustee and associated professionals may submit on the tentative or may appear and argue the tentative.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Steven A. Smelser

Represented By
Timothy S Huyck

**United States Bankruptcy Court
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Hearing Room 303

11:00 AM

CONT... Steven A. Smelser

Chapter 7

Trustee(s):

Lynda T. Bui (TR)

Represented By
Leonard M Shulman
Brandon J Iskander

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 20, 2017

Hearing Room 303

11:00 AM

6:13-13557 Michael Sevilla Santos and Maricar Domingo Santos

Chapter 7

#5.00 CONT Notice of Trustee's Final Report and Applications for Compensation

From: 12/6/17

EH__

Docket 132

Tentative Ruling:

12/20/17

Although the lodestar approach is customary for attorney fee calculations, the Ninth Circuit has held that it is not required in the bankruptcy context where it would "not realistically quantify to numerical precision" the fee award. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc.*, 924 F.2d 955, 960 (9th Cir.1991).

The records of Trustee's Counsel contains numerous examples of "lumping". LBR 2016 specifically indicates that fee applications may not lump tasks performed. Lumping is prohibited specifically because it makes the task of determining reasonableness of counsel's time spent on specific tasks more difficult to achieve.

Here, the entries on February 23, 2016, March 11, 2016, April 5, 2016, April 14, 2016, and April 28, 2016, are samples of unacceptable lumping contained in the application. The difficulty in ascertaining reasonableness of fees when balanced against the amount recovered by Counsel for the Estate warrants a 10% further reduction (the Court acknowledges that fees were already reduced by stipulation with the Trustee by 7%) in fees of \$6,385.40 for a total fee award of \$57,469.10. While the Court believes there are other issues of reasonableness, given the totality of the circumstances, the Court is satisfied with a 10% reduction.

The applications for compensation of the Trustee, Counsel for the Trustee, and Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report and the Applications of the associated professionals, the following administrative claims will be allowed:

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Wednesday, December 20, 2017

Hearing Room 303

11:00 AM

6:17-10240 Ariel A. Flores

Chapter 7

#6.00 Motion Objecting to Debtor's Claimed Exemptions

EH__

Docket 54

Tentative Ruling:

12/20/2017

BACKGROUND

On January 11, 2017 ("Petition Date"), Ariel Flores ("Debtor") filed her petition for chapter 7 relief. Larry Simons is the duly appointed chapter 7 trustee ("Trustee"). On October 26, 2017, the Debtor amended schedules A/B and C [Docket Numbers 51 and 52] (the "Amended Schedules"). The Debtor's Amended Schedules seek to exempt \$8,336 for 2016 Tax Returns as well as the \$13,117 asserted value of a 2012 Honda Civic.

On November 21, 2017, the Trustee filed his Objection to Debtor's Claimed Exemptions ("Objection"). The Objection is timely and no opposition has been filed. Service appears proper under the circumstances.

DISCUSSION

I. *The Tax Refunds*

The Debtor claimed an exemption in 2016 tax refunds under California Code of Civil Procedure §§ 704.080, 704.070 and 706.051. Here, the Court is persuaded by the Trustee that § 704.080 (which applies to public benefits), § 704.070 (which applies to "paid earnings"), and § 706.051 (exempting from levy earnings necessary for support) are inapplicable to tax refunds. Additionally, the Debtor, for his part has not filed opposition or come forward with any legal authority indicating that the exemption is proper under either of the three subsections asserted in Amended Schedule C. For these reasons, the Court is inclined to SUSTAIN the Objection of the

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11:00 AM

CONT... Ariel A. Flores

Chapter 7

Trustee as to the claimed exemption in tax refunds.

II. *The 2012 Honda Civic*

The Debtor claimed an exemption in the 2012 Honda Civic under California Code of Civil Procedure §§ 704.010 and 704.060. First, although § 704.010 applies to the value of motor vehicles, the Trustee has pointed out that this exemption is capped at \$3,050, and the Debtor has already claimed this exemption to cover two other vehicles – a 2000 Hyundai Accent and a 2015 Mazda SUV – for which the combined value of these vehicles totals \$5,033. Thus, the Debtor's § 704.010 cap for motor vehicles has been reached and cannot be applied to safeguard the 2012 Honda Civic. Second, the Debtor attempts to exempt the Civic under § 704.060 (applicable to commercial vehicles). As to this second exemption, the Trustee correctly points out that the Debtor has provided no evidence that the Civic classifies as a "commercial vehicle" or that it can otherwise qualify as a "tool of the trade" vehicle such that this exemption would apply. Based on the foregoing, the Court is inclined to SUSTAIN the Objection of the Trustee as to the claimed exemption in the 2012 Honda Civic.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to SUSTAIN the Trustee's Objection in its entirety.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Ariel A. Flores

Represented By
Stefan R Pancer

Movant(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

CONT... Ariel A. Flores

Chapter 7

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 20, 2017

Hearing Room 303

11:00 AM

6:17-16272 Martha Lorena Soto Jimenez

Chapter 7

#7.00 Motion to Compel the Debtor to Appear for Her Meeting of Creditors and to Produce Documents Requested by Trustee

EH__

Docket 30

Tentative Ruling:

12/20/2017

BACKGROUND

On July 27, 2017, Martha Lorena Soto Jimenez ("Debtor") filed her petition for chapter 7 relief. Todd Frealy is the duly appointed chapter 7 trustee ("Trustee").

On November 28, 2017, the Trustee filed his Motion to Compel the Debtor to Appear for Her Meeting of Creditors and to Produce Documents Requested by Trustee ("Motion"). Service was proper and no opposition has been filed.

DISCUSSION

The Trustee has provided evidence that the Debtor at the initial meeting of creditors on August 31, 2017. At the initial meeting of creditors where the Trustee requested that she provide (1) mortgage statements for real property located at 1475 Capri Lane in San Jacinto, CA ("Property"), (2) proof of insurance for the Property, and (3) copies of judgments or orders issued by state court in connection with a pending dissolution action between the Debtor and Armando Cabadas.

The Debtor appeared at the continued meeting of creditors on September 18, 2017, without her counsel but did not produce the documents and indicated that she had provided the documents to her counsel. The Trustee continued the meeting. The Trustee has continued the meeting of creditors a total of three times since her last appearance on September 18, 2017, and the Debtor has failed to appear at all three

**United States Bankruptcy Court
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CONT... Martha Lorena Soto Jimenez Chapter 7

continued meetings of creditors. Additionally, the Debtor has failed to provide any of the documents requested by the Trustee at the initial meeting in August 2017.

Based on the foregoing, the Trustee seeks an order compelling the Debtor's appearance at her Section 341(a) meeting of creditors, and compelling the Debtor to produce the requested documents to the Trustee within 10 days of entry of an order granting the Motion.

Section 521(a)(3) of the Bankruptcy Code requires a Debtor's cooperation with the Trustee and §§ 521(a)(4) and 542 require the Debtor to turn over records relating to estate property. Here, the Debtor's failure to cooperate or turn over documents requested by the Trustee constitute represent an unacceptable unwillingness to comply with the duties concomitant to entitlement to a chapter 7 discharge.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to GRANT the Motion in its entirety.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Martha Lorena Soto Jimenez

Represented By
Marlin Branstetter

Movant(s):

Todd A. Frealy (TR)

Represented By
Carmela Pagay

Trustee(s):

Todd A. Frealy (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
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Wednesday, December 20, 2017

Hearing Room 303

11:00 AM

6:11-12917 Brad Stoddard and Deborah Ann Stoddard

Chapter 13

#8.00 CONT Order to Show Cause Hearing Why Matthew Resnik, Brad and Deborah Stoddard should not be sanctioned
(Holding date)

From: 8/31/17, 10/2/17, 10/18/17, 11/15/17

Also #8.1

EH__

Docket 110

Tentative Ruling:

10/18/17

BACKGROUND

On January 28, 2011, Brad & Deborah Stoddard ("Debtors") filed a Chapter 13 voluntary petition. On May 24, 2011, Debtors' Chapter 13 plan was confirmed. The plan contained the following provision, section V.F.: "The debt of American Education Services will be discharged; the school has been stripped of accreditation and is on probation." On December 5, 2016, Debtors received a discharge, and, on January 13, 2017, the case was closed.

On May 11, 2017, Debtors filed a motion for an order to show cause why creditor American Educational Services ("AES") should not be held in contempt court, and for damages and attorney's fees, for intentionally violating the discharge injunction. Because of inadequate service, the motion was originally denied without prejudice, and Debtors refiled the motion on June 1, 2017. AES filed its opposition on June 8, 2017. At a hearing on the matter on July 27, 2017, the Court continued the matter to

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CONT... Brad Stoddard and Deborah Ann Stoddard
October 2, 2017.

Chapter 13

On July 31, 2017, the Court issued its Order to Show Cause why Matthew Resnik ("Resnik"), Brad Stoddard, and Deborah Stoddard should not be sanctioned for including a prohibited provision in a Chapter 13 plan (the "OSC"). Debtors filed their opposition on August 14, 2017. Resnik filed his opposition on August 17, 2017. AES filed its reply on August 24, 2017. Resnick filed supplemental responses on September 21 and 22, 2017.

DISCUSSION

I. Introduction

The OSC is issued in light of, and accordance with, the Supreme Court's decision in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010). In *Espinosa*, the bankruptcy court had confirmed a Chapter 13 plan which purported to discharge student loan debt without complying with the applicable procedural requirements. After intercepting debtor's income tax refund to use towards payment of student loans, the creditor argued that the bankruptcy court's order confirming the debtor's Chapter 13 plan should be declared void. The Supreme Court held that, absent a jurisdictional or due process violation (which was not present) the bankruptcy court's legal error in confirming the Chapter 13 plan with a provision that impermissibly discharged student loan debt, did not render the order void. At the conclusion of its opinion, the Supreme Court opined:

We acknowledge the potential for bad-faith litigation tactics. But expanding the availability of relief under Rule 60(b)(4) is not an appropriate prophylaxis. As we stated in *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992), "debtors and their attorneys face penalties under various provisions for engaging in improper conduct in bankruptcy proceedings." *Id.* at 644; *see also* Fed. R. Bankr. P. Rule 9011. The specter of such penalties should deter bad-faith attempts to discharge student loan debt without the undue hardship finding

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CONT... **Brad Stoddard and Deborah Ann Stoddard**
Congress required.

Chapter 13

Espinosa, 559 U.S. at 278. Here, the Court is tasked with interpreting and implementing the guidance provided by the Supreme Court in *Espinosa*.

Debtors and Resnick have filed separate responses to the Court's OSC. Debtors have raised five arguments in their opposition: (1) that the Court already found that the plan was filed in good faith; (2) that the plan must be given *res judicata* effect; (3) that the Court is exceeding its discretionary sanctioning authority; (4) that the OSC is an illegal *ex post facto* law; and (5) that Fed. R. Bankr. P. Rule 9011 is inapplicable. Resnick offers the following categories of arguments in his opposition: (1) use of the Court's inherent sanctioning authority is inappropriate here; (2) Rule 9011 sanctions require a contempt finding; (3) Section 105 is inapplicable; and (4) the plan provision at issue is not prohibited. The Court will analyze the respondents' arguments separately.

II. Debtors' Opposition

A. The Court's Good Faith Finding

11 U.S.C. § 1325(a)(3) states:

- (a) Except as provided in subsection (b), the court shall confirm a plan if –
- (3) the plan has been proposed in good faith and not by any means forbidden by law

Debtors argue that: "[i]t necessarily follows [from § 1325(a)(3)] that the Court has

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CONT... **Brad Stoddard and Deborah Ann Stoddard** **Chapter 13**

already made an express finding that the Plan was filed in good faith." This result does not necessarily follow from the language of the statute. The plain language of § 1325 (a) operates to eliminate the discretion of the court if the court finds that the debtor has satisfied the nine subsections of § 1325(a); the provision does not state the consequences of a finding that some, but not all, of the § 1325(a) subsections have been satisfied. As is stated by the leading bankruptcy treatise:

The standards set forth in section 1325(a), however, are not requirements that must be met in every case before a plan can be confirmed. Unlike section 1322 (a), section 1325(a) does not state that "the plan shall" comply with its listed criteria. Nor does it state, as does section 1129(a), that the court shall confirm the plan *only if* certain requirements are met. Instead it states only that if its criteria are met the court must confirm the plan. Therefore, the court has discretion to confirm a plan that does not comply with all of the standards of section 1325(a), particularly if no party objects.

8 Collier on Bankruptcy ¶ 1325.01 (16th ed. 2016) (footnotes omitted).

Despite the plain language of the statute, the Ninth Circuit Court of Appeals, without any independent analysis, and relying on an out of circuit bankruptcy court decision, has determined that the requirements of § 1325(a) are mandatory for Chapter 13 plan confirmation. *See In Chinichian*, 784 F.2d 1440, 1443-44 (9th Cir. 1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met.") (*citing In re Elkind*, 11 B.R. 473, 476 (Bankr. D. Colo. 1981)). While it remains unclear from where the mandatory characterization of § 1325(a) arose, a variety of courts have, in passing, assumed that the § 1325(a) standards are mandatory for plan confirmation. *See, e.g., Assocs. Comm. Corp. v. Rash*, 520 U.S. 953, 956 (1997) ("To qualify for confirmation under Chapter 13, the Rash's plan had to satisfy the requirements set forth in § 1325(a) of the Code."); *Shaw v. Aurgroup Fin. Credit Union*, 552 F.3d 447, 459 (6th Cir. 2009) ("Numerous district and bankruptcy courts outside the Fifth, Ninth, Tenth, and Eleventh Circuits, including courts within this circuit, have also held, suggested, or assumed that the provision in § 1325(a) are mandatory.") (collecting cases). *But see In re Szostek*, 886 F.2d 1405, 1411 (3rd Cir. 1989) ("On the other hand, if the conditions of § 1325 are not met, although the requirements of § 1322 are fulfilled, the court has the discretion to confirm the plan. If Congress had intended for

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§ 1325(a) to be mandatory, it could have included that requirement with the requirements already listed in § 1322); *see also Matter of Escobedo*, 28 F.3d 34, 34 (7th Cir. 1994) ("We note, however, as did the court in *Szostek*, that while the provisions of § 1325(a)(5) may be discretionary[,] the requirements of § 1322(a)(2) are mandatory.). Indeed, even *Espinosa* appears to implicitly assume that the § 1325(a) requirements are mandatory. *See* 559 U.S. 260, 277 ("That is because § 1325(a) instructs a bankruptcy court to confirm a plan *only* if the court finds, *inter alia*, that the plan complies with the 'applicable provisions' of the Code.") (emphasis added). Therefore, it would appear that binding case law suggests that the § 1325(a) requirements, including good faith, are mandatory requirements for confirmation.

B. Res Judicata

While the Court accepts Debtors' argument that, by confirming their Chapter 13 plan, the Court implicitly found that the plan was filed in good faith, the Court rejects Debtors' argument that that finding is *res judicata* with regard to the Court. 11 U.S.C. § 1327(a) states: "The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." The Court is not a creditor and Debtors have advanced no argument as to how § 1327(a) would prevent the Court from revisiting its finding of good faith. In fact, the Ninth Circuit Court of Appeals opinion that concluded the § 1325(a) requirements were mandatory stated the following: "Because section 1325(a)(3) of Title 11 requires the Chinichians to propose their plan in good faith, the bankruptcy court has jurisdiction to revoke a plan if the plan was not filed in good faith." *In re Chinichian*, 784 F.2d 1440, 1442 (9th Cir. 1986). The Ninth Circuit's further comments indicate that it believed such powers were expansive:

The Chinichians argue, however, that because section 1330 is a specific statute it should govern the more general section 105. The *Mancari* rationale that a specific statute cannot be nullified by a more general one is only applicable where a conflict exists.

Section 1330 provides a method of revoking a confirmation order "on request

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of a party in interest." While it does not specifically authorize such a revocation by the court sua sponte, it does not prohibit such action. Section 105 constitutes authority for the court to issue any order necessary to carry out the provisions of the Code. That reservoir of power in no manner conflicts with the authority to act upon the request of an interested party, but constitutes a supplemental method of revocation in the event of fraud. It would be absurd to hold that the bankruptcy court is powerless to correct a fraud unless first requested by an interested party, and that is not what section 1330 provides.

Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.

Further, a bankruptcy court is a court of equity. As a court of equity, it may look through form to the substance of a transaction and devise new remedies where those at law are inadequate. Further, it can modify or vacate its order so long as no intervening right has become vested in reliance thereon. Thus, the bankruptcy court had equitable power to revoke its order partially confirming the Chinichians' plan once it recognized the Chinichians did not file their plan in good faith as required by section 1325(a)(3).

Id. at 1442-43 (citations omitted).

Debtors' argument that § 1327 operates to prevent the Court from modifying its implicit good faith finding when confirming the plan lacks merit. The statute states that the terms of the provisions of a confirmed plan are binding on the debtor and creditors. The Court is not a creditor or a debtor nor is the Court's good faith finding a provision of a confirmed plan. Nor does *res judicata* prevent a court from revoking or amending its own order. Such a principle would eliminate the ability to revoke or modify a judgment altogether, rendering obsolete Fed. R. Civ. P. Rules 59 & 60, in addition to many others legal provisions. Debtors' argument that the Court is bound by its own previous finding due to *res judicata* is not compelling.

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C. The Court Lacks Authority to Issue Sanctions

Debtors' argument that the Court lacks authority to issue sanctions can be summarized in the following: (1) the Court is precluded from finding that the plan was proposed in bad faith due to *res judicata*; and (2) the Court must find that the plan was proposed in bad faith for sanctions to be warranted. Because the Court rejects (1), as outlined above, Debtors' argument must fail.

D. The OSC is an "Illegal Ex Post Facto Law"

In their fourth argument, Debtors argue that this OSC is an *ex post facto* law. As noted by Debtors, Art. 1 §§ 9 & 10 of the Constitution prohibit *ex post facto* laws. Article 1 of the Constitution deals with the legislative branch – the branch of the government that makes laws. The Judicial Branch does not make laws. Debtors' argument that a court order is an *ex post facto* law is therefore, necessarily, invalid.

E. Rule 9011 is Inapplicable

Fed. R. Bankr. P. Rule 9011(b)(2) states:

By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, --

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the

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Fed. R. Bankr. P. Rule 9011(c)(1)(B) states: "[O]n its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto."

Debtors' nine subsection argument why Fed. R. Bankr. P. Rule 9011 is inapplicable is rather chaotic and disorganized. Regardless, the Court acknowledges that, as to Debtors, Rule 9011 sanctions are inapplicable due to the operation of Rule 9011(c)(2) (A). Therefore, the Court agrees that Rule 9011 cannot operate as the source of sanctions against Debtors.

III. Resnick's Opposition

A. Inherent Sanctioning Authority

The Supreme Court has stated: "it is firmly established that the power to punish for contempts is inherent in all courts." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (quoting *Ex parte Robinson*, 19 Wall. 505, 510 (1874)); see also *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir. 2001) ("[T]he district court has the inherent authority to impose sanctions for bad faith, which includes a broad range of willful improper conduct."). The Ninth Circuit has stated: "*Itel* teaches that sanctions are justified when a party acts *for an improper purpose* – even if the act consists of making a truthful statement or a non-frivolous argument or objection. *Fink*, 239 F.3d at 922; see also *In re Dyer*, 322 F.3d 1178, 1196 (9th Cir. 2003) (discussing bad faith and willful misconduct).

Nevertheless, as Resnick states: "when there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the Rules, the court ordinarily

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should rely on the Rules rather than the inherent power." *Chambers*, 501 U.S. at 50. Because the Court believes that the existing framework provides an adequate basis for sanctions in this type of situation, the Court need not rely on its inherent sanctioning authority.

B. Rule 9011

When imposing sanctions, *sua sponte*, under Fed. R. Bankr. P. Rule 9011, "sanctions 'will ordinarily be imposed only in situations that are *akin to a contempt of court*.'" *United Nat'l Ins. Co. v. R&D Latex Corp.*, 242 F.3d 1102, 1116 (9th Cir. 2001) (*citing Barber v. Miller*, 146 F.3d 707, 711 (9th Cir. 1998); *see also* Fed. R. Civ. P. Rule 11, Advisory Committee Notes ("Since show cause orders will ordinarily be issued only in situations that are akin to a contempt of court, the rule does not provide a 'safe harbor' to a litigant for withdrawing a claim, defense, etc., after a show cause has been issued on the court's own initiative.")). "[P]rior to imposing court-initiated sanctions, the district court is required to determine whether counsel's conduct is 'akin to contempt.'" *Gonzalez v. Texaco Inc.*, 344 Fed. Appx. 304, 308 (9th Cir. 2009) (*quoting R&D Latex Corp.*, 242 F.3d 1102, 1118)).

In this situation, the Court defers to Bankruptcy Judge TeSelle:

At the hearing on the motions to dismiss conducted by the Court in these cases on May 2, 2000, it was clear to the Court that debtors' counsel included these plan provisions in the hope that they would trap an unwary student loan creditor. If a plan containing a student loan discharge provision is confirmed, debtors and their counsel argue that the student loan obligation is discharged under the theory of *res judicata*, improperly relying on a skewed interpretation of the opinion of the Tenth Circuit Court of Appeals in *In re Andersen*, 179 F.3d 1253 (10th Cir. 1999) to support their position. If an objection to confirmation is raised by either the Trustee or the student loan creditor, the offending language is simply removed from the plan, and debtors are no worse off for their attempt. The Court will not permit this type of gamesmanship on the part of debtors and their counsel to continue. Conduct such as this has no

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place in the practice of bankruptcy law, and will not be tolerated by this Court.

The citation of the opinion of the Tenth Circuit in *Andersen, supra*, as authority for the practice of intentionally inserting language in a chapter 13 plan that violates the Bankruptcy Code and Rules, and as authorizing counsel to stand by silently and thereby induce the Court to confirm a plan that contains a provision that counsel knows violates the Bankruptcy Code and Rules, is at once offensive and specious. Counsel appearing before this Court are officers of the Court and are ethically obligated to inform the Court if they are aware of the existence of a plan provision that renders the plan non-confirmable.

Rather than recognizing their obligations to the Court and to opposing counsel, counsel for debtors in these cases go so far as to suggest that they are compelled by *Andersen* to recommend that their clients include these unlawful plan provisions, implying that their failure to do so might be an act of professional negligence. The Court does not believe that a fair reading of the opinion of the Tenth Circuit in *Andersen* can reasonably lead one to conclude that the Tenth Circuit intended to encourage the practice of intentionally inserting unlawful plan provisions in the hope that confirmation of the plan will occur and the time for appeal will pass before such provisions are noticed so that debtors and their counsel can then claim *res judicata*. Such a skewed reading of *Andersen* fails to account for the ethical obligations owed by members of the bar to the Court and to each other.

This is particularly true given the volume of chapter 13 filings in this district, and the fact that the Court does not have the time to independently review every chapter 13 plan and confirmation order to determine whether an attempt to unlawfully discharge a student loan obligation is being made. Because the Court has apparently been unable to rely on the ethical conduct of some of the counsel representing chapter 13 debtors appearing before it, the Court, up to his point in time, has been forced to rely on a party in interest other than the debtor to point out those instances in which such student loan discharges have been attempted through plan provisions. Where the Court has become aware of such attempts, either through objections by the student loan creditor or through the inclusion of such a provision in the order confirming the chapter 13 plan,

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the Court has refused to confirm the plan containing such language, and has stricken language from confirmation orders attempting to effect a discharge of student loan indebtedness in this manner.

...

In light of the existing case law concerning the impropriety of the inclusion of such student loan discharge provisions in chapter 13 plans, and the unambiguous language of the Bankruptcy Code and Rules, the Court believes that the inclusion of such a provision in a chapter 13 plan and/or order confirming a chapter 13 plan is both unethical and sanctionable conduct pursuant to Bankruptcy Rule 9011. Bankruptcy Rule 9011(b) concerns representations made to the Court. It states that by presenting a paper to the Court, an attorney or unrepresented party certifies to the best of his or her knowledge, information and belief, formed after a reasonable inquiry under the circumstances, that the legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. *See* Fed. R. Bankr. P. Rule 9011 (b)(2).

...

The Court refuses to allow counsel for debtors to turn the inclusion of a student loan discharge provision in a chapter 13 plan into a "can't lose" proposition. The Court therefore concludes that *Andersen* provides no protection from the imposition of sanctions under Rule 9011(b) in cases in which a student loan discharge provision is included in a confirmed chapter 13 plan.

In re Hensley, 249 B.R. 318, 320-323 (Bankr. W.D. Okla. 2000).

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C. Section 105

11 U.S.C. § 105(a) states:

- (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary to enforce or implement court orders or rules, or to prevent an abuse of process.

Resnick offers a single argument in support of his position that § 105(a) is inapplicable: that the provision only applies to violations of a specific court order. Resnick cites *In re Dyer* in support of this statement. 322 F.3d 1178, 1196 (9th Cir. 2003) ("Civil contempt authority allows a court to remedy a violation of a specific order (including 'automatic' orders, such as the automatic stay or discharge injunction).").

Dyer does not explicitly state that § 105(a) is strictly limited to remedying violations of specific court orders, nor does it cite any authority from which it could be inferred that the *Dyer* court had such an opinion. Indeed § 105(a) explicitly mentions, in addition to court orders, rules and "abuse of process"; the latter might be invoked in the absence of a specific court order.

The Supreme Court, on two occasions after *Dyer*, has written an opinion which

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indicates that § 105 is not strictly limited to correcting violations of specific court orders. First, in *Marrama v. Citizens Bank of Mass.*, the Supreme Court wrote:

On the contrary, the broad authority granted to bankruptcy judges to take any action that is necessary or appropriate to prevent an abuse of process described in § 105(a) of the Code, is surely adequate to authorize an immediate denial of a motion to convert filed under § 706 in lieu of a conversion order that merely postpones the allowance of equivalent relief and may provide a debtor with an opportunity to take action prejudicial to creditors.

549 U.S. 365, 375 (2007) (footnote omitted). The "abuse of process" referenced in *Marrama* was not a violation of a specific court order, but, rather, "an unmeritorious attempt to qualify as a debtor under Chapter 13." *Id.*

Second, in *Law v. Siegel*, the Supreme Court stated: "Section 105(a) confers authority to 'carry out' the provisions of the Code." This statement is natural, since the first sentence of § 105(a) states: "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

Here, the Court concludes that a specific and definite court order has not been violated. Nevertheless, the reconciliation of *Dyer* and *Marrama* helps illustrate the proper approach forward. The Ninth Circuit Court of Appeal's instructions that sanctions under § 105(a) are appropriate for violation of a specific and definite court order is derived from the non-bankruptcy standard for civil contempt. *See F.T.C. v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999) (*quoting Stone v. City & Cnty. of S.F.*, 968 F.2d 850, 856 n.9 (9th Cir. 1992)) ("The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court. The burden then shifts to the contemnors to demonstrate why they were unable to comply."). Nevertheless, as illustrated by *Marrama*, the Court's authority under § 105(a) is not strictly limited to issuing sanctions for civil contempt. While a civil contempt finding under § 105(a) may not be appropriate in these circumstances, it does not follow that the Court lacks the ability to adequately and equitably resolve this situation.

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TENTATIVE RULING

The Court is inclined to CONTINUE the hearing for approximately thirty days to allow Debtors to file a supplemental brief addressing why they should not be sanctioned pursuant to the Court's inherent sanctioning authority. No further briefing from Resnick is requested.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Brad Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Joint Debtor(s):

Deborah Ann Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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6:11-12917 Brad Stoddard and Deborah Ann Stoddard

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#8.10 Motion - American Education Services' Request for Attorneys' Fees with Respect to the Court's Order to Show Cause Why Matthew Resnik, Brad Stoddard, and Deborah Stoddard Should Not Be Sanctioned for Including a Prohibited Provision in a Chapter 13 Plan

Also #8

EH__

Docket 137

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brad Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Joint Debtor(s):

Deborah Ann Stoddard

Represented By
Matthew D Resnik
David Brian Lally

Movant(s):

AES/PHEAA

Represented By
Scott A Schiff

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By
Amrane (RS) Cohen (TR)

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6:16-18182 Douglas Edward Goodman and Anne Louise Goodman

Chapter 13

#9.00 CONT Motion RE: Objection to Claim Number 11 by Claimant Natasha Reynoso and Mark Reynoso

HOLDING DATE

From: 5/4/17, 8/24/17, 8/31/17, 9/14/17, 11/9/17

EH__

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Movant(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Trustee(s):

Rod Danielson (TR)

Pro Se

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Adv#: 6:16-01277 Reynoso v. Goodman et al

#10.00 Motion of Cross-Defendants Jose Pastora and Theresa Mann to Dismiss First Amended Cross Complaint

Advanced From: 12/21/17

Also #11 & #12

EH__

Docket 54

Tentative Ruling:

12/21/17

BACKGROUND

On December 21, 2016, Mark & Natasha Reynoso ("Plaintiffs") filed a complaint to determine non-dischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A) against Douglas & Anne Goodman ("Debtors"). On February 3, 2017, the complaint was dismissed with leave to amend, and, on February 28, 2017, Plaintiffs filed an amended complaint. On March 31, 2017, Debtors filed another motion to dismiss, which was orally denied on May 4, 2017, although it does not appear that an order was ever lodged by Plaintiffs.

On June 5, 2017, Debtors filed an answer ("Answer") and what was characterized as a "cross-claim" against Jose Pastora ("Pastora") and Theresa Mann ("Mann"). On July 18, 2017, Mann & Pastora filed a motion to dismiss the "cross-complaint," and, on September 25, 2017, the "cross-complaint" was dismissed with leave to amend. On October 16, 2017, Debtors filed an amended "cross-complaint". On November 6, 2017, Pastora & Mann filed another motion to dismiss for failure to state a claim

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based on a variety of technical legal arguments. On December 6, 2017, Debtors filed their opposition to the motion to dismiss.

The factual basis of the non-dischargeability complaint is as follows: on February 12, 2015, Plaintiffs purchased certain real property located in Upland, California from Debtors. Mann and Remax Masters Realty worked as "dual agents" for Plaintiffs and Debtors. Plaintiffs contend that Mann represented that the square footage of the real property was 3,231 square feet, when in fact the actual square footage was only 2,713. Plaintiffs contend that Debtors (or at least Ms. Goodman) ratified this representation. Plaintiffs also allege that Ms. Goodman represented that a water leak in the bathroom had been repaired, but that the leak was not repaired. Debtors contend that no misrepresentations were made, and, alternatively, that if any misrepresentations were made, those misstatements were only made by Mann or Pastora.

DISCUSSION

I. Motion to Dismiss

Mann & Pastora make three arguments in their motion to dismiss: (1) that the amended third-party complaint should be dismissed based on binding admissions of Debtors; (2) that the amended complaint should be dismissed as a matter of state law; and (3) that Pastora is not a proper third-party defendant.

Regarding the first argument, Mann & Pastora identify portions of Debtors' Answer to the first amended complaint where Debtors generally denied Plaintiff's allegations, including denying that any misrepresentations were made to Plaintiffs. Mann & Pastora then provide the following analysis in their motion:

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¶¶¶ 8-10 cites what is **alleged** in the First Amended Complaint, but what a plaintiff alleges are merely inadmissible allegations, but what a party alleges are legally binding on said party. ¶¶¶ 11, 18, 28, and 35, claim that GOODMAN never made any such misrepresentations. This does establish wrongdoing by Cross-Defendants, as GOODMAN has admitted that Plaintiffs do not have a case.

There are a variety of problems with the above line of argument. First, the analysis provided by Mann & Pastora is nonsensical to the extent it can be comprehended. Second, the argument of Mann & Pastora, that "[s]tatements made in any pleading, [sic] are judicial admissions that bind the party making the admission throughout the litigation," is overly broad. This is especially true given that the final sentence of Mann & Pastora's analysis begins with: "[t]his does establish wrongdoing by Cross-Defendants," a statement which, under the interpretation advanced by Mann & Pastora, would appear to conclusively resolve the third-party complaint against them.

Apart from the serious drafting errors in the motion to dismiss, the argument is fundamentally flawed for several reasons –most notably because the denials in Debtors' answer are not admissions. An admission is defined as: "A statement in which someone admits that something is true or that he or she has done something wrong; any statement or assertion made by a party to a case and offered against that party; an acknowledgment that facts are true." Black's Law Dictionary (10th ed. 2014). Here the alleged admissions in the answer do not admit the truth of a fact, do not admit wrongdoing, and are not directed against the party making the statement. In fact, the statements are quite the opposite of an admission – they are a denial.

To illustrate why an admission and a denial are different, the Court points to the pertinent and thoughtful opinion on the matter in *In re Applin*, 108 B.R. 253, 258 (Bankr. E.D. Cal. 1989), which included the following:

Thus, the statement is no more than an argumentative assertion of a defense in

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a paper that, taken in its context, has the tenor of merely announcing that the debtors intended to put the moving party to its proof. It was the equivalent of an inconsistent plea.

Judicial admissions are not made upon ambiguous, 'assuming arguendo' comments by counsel and are not made upon inconsistent pleas.

See also id. at n.7 (providing a clear description of judicial admissions).

Finally, the Court notes that "[a] trial has discretion whether to accept a judicial admission." *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997). If there remains any doubt whether the subject statements are a judicial admission, the Court notes that it, alternatively, exercises its discretion to not accept the statements as a judicial admission.

Mann & Pastora's second argument is that the third-party complaint should be dismissed pursuant to California law, specifically Cal. Civ. Code § 1088. This argument lacks a valid legal basis because California law is not at issue in this proceeding. As noted above, Fed. R. Civ. P. Rule 14(a)(1) allows a defending party to bring a third-party complaint against "a nonparty who is or may be liable to it for all or part of the claim against it." There is no claim under California law against Debtors at this time, and, therefore, no claim under California law against Mann & Pastora at this time. Therefore, the elements and defenses that may arise under California law are irrelevant.

The third argument is that Pastora should be dismissed from the action. Among other things, the arguments point out that the amended third-party complaint does not raise any allegations against Pastora, but, instead, merely states that Pastora was involved in the sale and worked with Mann. The amended third-party complaint appears to contend that because Pastora worked with Mann he is also responsible for any statements Mann made. Specifically, the amended third-party complaint states: "[t]hese representations, and any alleged misrepresentations, were made by MANN,

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Remax Masters Realty, and therefore PASTORA as well since PASTORA was also working through Remax Masters Realty on this particular transaction."

To avoid dismissal under Fed. R. Civ. P. Rule 12(b)(6), a plaintiff must aver in the complaint 'sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). It is axiomatic that a claim cannot be plausible when it has no legal basis. A dismissal under Fed. R. Civ. P. Rule 12(b)(6) may be based either on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. *Johnson v. Riverside Healthcare Sys.*, 534 F.3d 1116, 1121 (9th Cir.2008).

Here, the amended third-party complaint lacks a cognizable legal theory to support a cause of action against Pastora. The assertions in the amended third-party complaint, if taken as true, do not support a cause of action against Pastora. Therefore, the Court is inclined to dismiss Pastora from the action.

II. Jurisdictional Issues

Additionally, the Court notes that there are significant, complicated jurisdictional concerns related to this "cross-complaint." As will be outlined below, the case law on the issue is sparse and does not directly resolve the issue.

As a preliminary matter, Plaintiffs complaint against Debtor was filed under 11 U.S.C. § 523(a)(2)(A) states:

- (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt –
 - (2) for money, property, services, or an extension, renewal, or

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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;

Therefore, Plaintiffs are requesting that the Court determine that their claim against Debtors is excepted from Debtor's discharge, if a discharge is received by Debtors, because their claim falls under the above exception. Additionally, Plaintiffs appear to be requesting a money judgment against Debtors.¹ The Court notes that while there is a split in authority regarding a bankruptcy's jurisdiction to enter a money judgment in a non-dischargeability proceeding, within the Ninth Circuit that question is answered in the affirmative. *See In re Kennedy*, 108 F.3d 1015 (9th Cir. 1997). *But see* 4 Collier's on Bankruptcy ¶ 523.32 (16th 3d. 2009) ("Courts are divided as to whether the bankruptcy court has subject matter jurisdiction to enter a money judgment in a nondischargeability determination."). The Ninth Circuit has been persuaded that the determination of dischargeability and the fixing of the amount of the non-dischargeable debt are inseparable functions. *See id.* at 1017-18 (*quoting In re Devitt*, 126 B.R. 212, 215 (Bankr. D. Md. 1991) ("If it is acknowledge as beyond question that a complaint to determine dischargeability of a debt is exclusively within the equitable jurisdiction of the bankruptcy court, then it must follow that the bankruptcy court may also render a money judgment in an amount certain without the assistance of a jury. This is true not merely because equitable jurisdiction attaches to the entire cause of action but more importantly because it is impossible to separate the determination of dischargeability function from the function of fixing the amount of the non-dischargeable debt.")).

As a second preliminary matter, the "cross-complaint" at issue here is not a cross-complaint. The Federal Rules of Civil Procedure, unlike the California Code of Civil Procedure, explicitly distinguishes between counter-claims (FRCP 13(a)-(e)), cross-claims (FRCP 13(g)), and third-party complaints (FRCP 14(a)). *But see* Cal. Code Civ. P. § 428.10 (referring to them all as "cross-claims"). Fed. R. Civ. P. Rules 13 and 14 are applicable in adversary proceedings. *See* Fed. R. Bankr. P. Rule 7013-7014. The "cross-complaint" at issue here is actually a third-party complaint. Fed. R. Civ. P. Rule 14(a)(1) states:

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A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer.

The concept of a third-party complaint in a non-dischargeability proceeding raises immediate issues. First and foremost, that part of Plaintiffs' complaint that requests that their claim be excepted from Debtor's discharge is clearly not the appropriate subject for a third-party complaint. *See, e.g., In re Narumanchi*, 221 B.R. 311, 315 n.9 (Bankr. D. Conn. 1998) ("Indeed the Court questions whether an entity could ever be secondarily liable to a bankruptcy debtor in connection with a determination of the dischargeability of a debt, given that pure dischargeability actions are declaratory in nature."). Furthermore, it is unclear if this Court has jurisdiction to consider the third-party complaint even where the non-dischargeability complaint also seeks a money judgment.

There appear to be only three cases that cite Fed. R. Bankr. P. Rule 7014 in the context of a non-dischargeability proceeding. In the first, *In re Narumanchi*, 221 B.R. 311 (Bankr. D. Conn.), the bankruptcy court abstained from hearing that part of the non-dischargeability complaint which requested a money judgment, limiting its review to the dischargeability of the debt. The bankruptcy court then, *sua sponte*, dismissed the third-party complaint as improper. In the second, *In re McCarter*, 289 B.R. 759 (Bankr. D.N.M. 2002), the bankruptcy court noted that the debtors had received a discharge and their Chapter 7 case had been fully administered. The bankruptcy court then reasoned that it either could not or would not exercise jurisdiction to hear the request for a money judgment, and consequently dismissed the third-party complaint as improper. And, in the third, *In re Pompa*, 2013 WL 2286080 (Bankr. W.D. Pa. 2013), the bankruptcy court noted that the non-dischargeability complaint did not include a request for a money judgment, and it dismissed the third-party complaint as improper. None of these three cases clearly resolves the issue here, and the jurisdictional question requires a more nuanced analysis.

A return to the nature of the non-dischargeability complaint and the third-party complaint is necessary to more thoroughly articulate the jurisdictional issues. The

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non-dischargeability complaint was filed pursuant to § 523(a)(2)(A), and the elements of that provision are well established: (1) the debtor made a false representation to deceive the creditor; (2) the creditor relief on the misrepresentation; (3) the reliance was justified; and (4) the plaintiff sustained a loss as a result of the misrepresentation. *See, e.g., In re White*, 550 B.R. 615, 620 (Bankr. N.D. Ga. 2016).

Therefore, in the absence of a false representation attributable to Debtors, the non-dischargeability complaint would not be successful, and there would no need for a third-party complaint. If there is a false representation attributable to Debtors, the implication would be that Debtors could be characterized as intentional tortfeasors. *See* 4 Collier's on Bankruptcy ¶ 523.08[1][d] (16th ed. 2016) ("The frauds included in the portion of section 523(a)(2)(A) under discussion are those that in fact involve moral turpitude or intentional wrong; fraud implied in law, which may be established without imputation or immorality, is insufficient."). This raises an additional issue because "third-party complaints for indemnification routinely are dismissed where the defendant/third-party plaintiff may be liable on the primary complaint only if he or she is an intentional wrongdoer." *In re Pompa* at *4 (citing *United Orient Bank, et. al. v. Green*, 207 B.R. 762 (S.D.N.Y. 1997)). In California, however, comparative equitable indemnification is permitted, at least in some circumstances, among joint intentional tortfeasors. *See In re First Alliance Mortg. Co.*, 471 F.3d 977 (9th Cir. 2006); *State Compensation Ins. Fund v. Drobot*, 2015 WL 12712320 (C.D. Cal. 2015); *Baird v. Jones*, 21 Cal. App.4th 684 (Cal. Ct. App. 1993).

California's allowance of comparative equitable indemnification in the context of joint intentional tortfeasors does not, however, definitely resolve the jurisdictional question. As discussed above, the Ninth Circuit has recognized a bankruptcy court's jurisdiction to enter a money judgment on a state law claim in conjunction with a non-dischargeability proceeding, but the legal basis for that jurisdiction is somewhat unclear. *In re Kennedy*, 108 F.3d 1015 (9th Cir. 1997) (primarily focusing on practical concerns); *see also* 4 Collier's on Bankruptcy ¶ 523.32 (16th ed. 2009) (outlining the conflicting opinions on a bankruptcy court's jurisdiction to enter a money judgment). While liquidating the amount of Plaintiffs' claim may be necessary in the non-dischargeability proceeding, determining the liability of Mann & Pastora, and assigning comparative fault appear to go beyond the scope of a typical non-dischargeability proceeding. A determination of the latter issues would require the Court to hold a trial on the interactions between two non-debtor parties (Plaintiffs and Mann), and to review the statements made by a non-debtor party, when only the statements of the Debtors are clearly relevant in a non-dischargeability proceeding.

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The pragmatic considerations that have been referenced in decisions affording bankruptcy courts jurisdiction to enter a money judgment in a non-dischargeability proceeding do not appear to be present here.

More importantly, however, while Plaintiffs have requested a money judgment in their first amended complaint, they do not appear to have provided any legal basis for their request – i.e. there is no state law basis to enter a money judgment. 11 U.S.C. § 523(a)(2) is not a basis to enter a money judgment; the plain language of the statute provides that it is a basis for finding a debt to be non-dischargeable. If Plaintiffs want a money judgment, they need to provide a non-bankruptcy law basis for their request.² Without that basis, it is impossible to determine what comparative equitable indemnification laws apply (or, as identified above, what state law affirmative defenses may apply), and, therefore, whether the third-party complaint is legally permissible.

Because Plaintiffs' amended complaint only contains a cause of action pursuant to 11 U.S.C. § 523(a)(2)(A), it would appear that there is no legal basis for a money judgment to be entered in the non-dischargeability complaint. Because there appears to be no legal basis for a money judgment to be entered in the non-dischargeability complaint, it would appear that the third-party complaint is improper.

TENTATIVE RULING

The Court is inclined to GRANT the motion to the extent the motion seeks to have Pastora dismissed from the action and DENY the motion otherwise. In connection with any future motion to dismiss, parties to include briefing on the jurisdictional and procedural issues raised in this tentative ruling.

APPEARANCES REQUIRED.

Party Information

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Chapter 13

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Defendant(s):

Douglas Edward Goodman

Represented By
Edward T Weber

Anne Louise Goodman

Represented By
Edward T Weber

Theresa Mann

Represented By
Andrew L Leff

Jose Pastora

Represented By
Andrew L Leff

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Movant(s):

Theresa Mann

Represented By
Andrew L Leff

Jose Pastora

Represented By
Andrew L Leff

Theresa Mann

Represented By
Andrew L Leff

Jose Pastora

Represented By
Andrew L Leff

Plaintiff(s):

Mark & Natasha Reynoso

Represented By
Michael J Hemming

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Trustee(s):

Rod Danielson (TR)

Pro Se

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6:16-18182 Douglas Edward Goodman

Chapter 13

Adv#: 6:16-01277 Reynoso v. Goodman et al

#11.00 CONT Status Conference RE: [26] Crossclaim by Anne Louise Goodman,
Douglas Edward Goodman against all defendants

From: 8/31/17, 9/14/17, 11/9/17

Also #10 - #12

EH__

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Defendant(s):

Douglas Edward Goodman

Represented By
Edward T Weber

Anne Louise Goodman

Represented By
Edward T Weber

Theresa Mann

Represented By
Andrew L Leff

Jose Pastora

Represented By
Andrew L Leff

Joint Debtor(s):

Anne Louise Goodman

Represented By

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Samer A Nahas
Edward T Weber

Plaintiff(s):

Mark & Natasha Reynoso

Represented By
Michael J Hemming

Trustee(s):

Rod Danielson (TR)

Pro Se

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6:16-18182 Douglas Edward Goodman

Chapter 13

Adv#: 6:16-01277 Reynoso v. Goodman et al

#12.00 CONT Status Conference RE: [13] Amended Complaint by Michael J Hemming on behalf of Mark & Natasha Reynoso against Anne Louise Goodman, Douglas Edward Goodman. (RE: related document(s)1 Adversary case 6:16-ap-01277. Complaint by Mark & Natasha Reynoso against Douglas Edward Goodman, Anne Louise Goodman. false pretenses, false representation, actual fraud) filed by Plaintiff Mark & Natasha Reynoso)
(Holding Date)

From: 5/4/17, 8/24/17, 8/31/17, 9/14/17, 11/9/17

Also #10 & #11

EH__

Docket 13

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Defendant(s):

Douglas Edward Goodman

Represented By
Edward T Weber

Anne Louise Goodman

Represented By
Edward T Weber

Theresa Mann

Represented By
Andrew L Leff

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Jose Pastora

Represented By
Andrew L Leff

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

Plaintiff(s):

Mark & Natasha Reynoso

Represented By
Michael J Hemming

Trustee(s):

Rod Danielson (TR)

Pro Se

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6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#13.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01224. Complaint by Larry D. Simons (TR) against Nabeel Naiem Slaieh, Joanne Fraleigh. (Charge To Estate \$350.00). Complaint for Avoidance and Recovery of Unauthorized Post-Petition Transfer (Attachments: # 1 Part 2 of 2 # 2 Adversary Proceeding Cover Sheet) Nature of Suit: (14 (Recovery of money/property - other))

From: 11/2/16, 2/1/17, 2/15/17, 4/26/17, 5/17/17, 6/7/17, 7/12/17

EH__

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED 11/13/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

Nabeel Naiem Slaieh

Represented By
George A Saba

Joanne Fraleigh

Represented By
George A Saba

David A. Wood

Pro Se

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

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CONT... Nabeel Slaieh

Chapter 7

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

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6:13-26277 Charles Frederick Biehl

Chapter 7

Adv#: 6:15-01265 Pringle v. Clements-Biehl

#14.00 CONT Pre-Trial Conference RE: [1] Adversary case 6:15-ap-01265. Complaint by John P. Pringle against Rene Clements-Biehl. (Charge To Estate). (14 (Recovery of money/property - other)),(13 (Recovery of money/property - 548 fraudulent transfer))

From: 2/1/17, 3/29/17, 5/31/17, 6/7/17, 9/13/17

EH__

Docket 1

***** VACATED *** REASON: ORDER DISMISSING ADVERSARY
FILED 11/15/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Frederick Biehl

Represented By
Daryl L Binkley - DISBARRED -
Steven L Bryson

Defendant(s):

Rene Clements-Biehl

Represented By
Allan D Sarver

Plaintiff(s):

John P. Pringle

Represented By
Elyza P Eshaghi
Brandon J Iskander

Trustee(s):

John P Pringle (TR)

Represented By
James C Bastian Jr

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CONT...

Charles Frederick Biehl

Chapter 7

Elyza P Eshaghi
Brandon J Iskander
Lynda T Bui
Leonard M Shulman

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6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#15.00 CONT Motion For Summary Judgment/Memorandum of Points and Authorities on the Preclusive Effect of Plaintiff's State Court Judgment
HOLDING DATE

From: 6/7/17, 7/12/17, 8/2/17, 9/27/17, 10/4/17, 11/1/17, 12/6/17

EH__

Docket 208

***** VACATED *** REASON: TAKEN OFF CALENDAR/UNDER
SUBMISSION**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi
Ryan F Thomas

Movant(s):

Charles Edward Schrader

Pro Se

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#16.00 CONT Status Conference RE: Adversary case 6:13-ap-01171. Complaint by Charles Edward Schrader against Narinder Sangha . willful and malicious injury
HOLDING DATE

From: 7/8/15, 11/4/15, 3/2/16, 12/14/16, 12/13/17, 4/5/17, 6/7/17, 7/12/17, 8/2/17, 9/27/17, 10/4/17, 11/1/17, 12/6/17

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 2/28/18 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Deepalie M Joshi
Ryan F Thomas

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:16-18182 Douglas Edward Goodman

Chapter 13

Adv#: 6:16-01277 Reynoso v. Goodman et al

#1.00 Motion of Cross-Defendants Jose Pastora and Theresa Mann to Dismiss First Amended Cross Complaint

EH__

Docket 54

***** VACATED *** REASON: ADVANCED TO 12/20/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Edward Goodman

Represented By
Samer A Nahas
Edward T Weber

Defendant(s):

Douglas Edward Goodman

Represented By
Edward T Weber

Anne Louise Goodman

Represented By
Edward T Weber

Theresa Mann

Represented By
Andrew L Leff

Jose Pastora

Represented By
Andrew L Leff

Joint Debtor(s):

Anne Louise Goodman

Represented By
Samer A Nahas
Edward T Weber

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Movant(s):

Theresa Mann

Represented By
Andrew L Leff

Jose Pastora

Represented By
Andrew L Leff

Theresa Mann

Represented By
Andrew L Leff

Jose Pastora

Represented By
Andrew L Leff

Plaintiff(s):

Mark & Natasha Reynoso

Represented By
Michael J Hemming

Trustee(s):

Rod Danielson (TR)

Pro Se

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6:17-14501 Julie Lynn Salazar

Chapter 13

Adv#: 6:17-01213 Winegardner Masonry, Inc. v. Salazar

#2.00 Status Conference RE: [1] Adversary case 6:17-ap-01213. Complaint by Winegardner Masonry, Inc. against Julie Lynn Salazar. fraud as fiduciary, embezzlement, larceny)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(72 (Injunctive relief - other)) (Smelko, William)

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julie Lynn Salazar

Represented By
Jenny L Doling
Summer M Shaw

Defendant(s):

Julie Lynn Salazar

Represented By
Joseph C Markowitz

Plaintiff(s):

Winegardner Masonry, Inc.

Represented By
William A Smelko

Trustee(s):

Rod Danielson (TR)

Pro Se

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6:14-23150 Vivian Munson

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#3.00 Motion RE: Objection to Claim Number 5 by Claimant Internal Revenue Service.

Also #4

EH__

Docket 186

Tentative Ruling:

12/21/17

Background:

On October 24, 2014, Vivian Munson ("Debtor") filed a Chapter 13 voluntary petition. On December 5, 2014, Debtor's Chapter 13 plan was confirmed. Six days later, the case was dismissed for failure to file copies of payment advices. The next day, Debtor filed a motion to vacate dismissal. On January 6, 2015, dismissal was vacated, and, three days later, another order confirming plan was entered. The plan has been modified once since confirmation.

On March 13, 2015, the IRS filed a claim in the amount of \$73,494.83, of which amount \$28,652.56 was identified as secured ("Claim 5"). On May 15, 2015, the IRS amended Claim 5 to assert a claim of \$37,350.59, of which \$20,231.20 was identified as secured. On March 4, 2016, the IRS again amended Claim 5, this time to assert a claim of \$28,880.97, of which \$20,761.34 was identified as secured. On November 2, 2017, Debtor filed an objection to Claim 5. On December 7, 2017, the IRS filed its opposition.

Debtor previously received a Chapter 7 discharge on September 2, 2014, and Debtor

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argues that the personal liability for Claim 5 was eliminated by that discharge. The IRS has responded by stating that Fed. R. Bankr. P. Rule 7001(6) requires Debtor to bring an adversary proceeding to determine the dischargeability of Claim 5.

Applicable Law:

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Absent an objection, a proof of claim constitutes *prima facie* evidence of the validity and amount of the claim under Federal Rule of Bankruptcy Procedure ("FRBP") 3001(f). See *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000). When a party files an objection to a proof of claim, that filing "creates a dispute which is a contested matter" within the meaning of FRBP 9014 and the Court must resolve the matter after notice and opportunity for hearing upon a motion for relief. *Id.*

When a creditor has filed a proof of claim that complies with the rules (thereby giving rise to the presumption of validity), the burden shifts to the objecting party who must "present evidence to overcome the *prima facie* case." *In re Medina*, 205 B.R. 216, 222 (9th Cir. B.A.P. 1996). To defeat the claim, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (*quoting In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). "The objector must produce evidence, which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency." *Lundell*, 223 F.3d at 1040 (*quoting In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)). If the objecting party produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts back to the claimant to prove the validity of the claim by a preponderance of the evidence. See *In re Consol. Pioneer Mort*, 178 B.R. 222, 226 (9th Cir. BAP 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996) (*quoting Allegheny Int'l*, 954 F.2d at 173-74). The ultimate burden of persuasion remains at all times on the claimant. See *Lundell*, 223 F.3d at 1039; *see also Holm*, 931 F.2d at 623.

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Analysis:

Fed. R. Bankr. P. Rule 7001(6) states:

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

(6) a proceeding to determine the dischargeability of debt.

The above provision not only applies to creditors who wish to have a debt determined to be non-dischargeable, it also applies to debtors who wish to secure a determination that a debt is dischargeable. *See, e.g., In re Galey*, 230 B.R. 898 (Bankr. S.D. Ga. 1999); *In re Horn*, 169 B.R. 218 (Bankr E.D. Okla. 1994) (pre-petition tax liability); *see also* 10 Collier's on Bankruptcy ¶ 7001.07 (16th ed. 2016) ("Similarly, if there is a question as to whether a particular debt is excepted from discharge, the debtor may desire to have the court determine its dischargeability. In either instance, the Bankruptcy Rules require that the request for such a determination take the form of an adversary proceeding.").

Here, the IRS has asserted Fed. R. Bankr. P. Rule 7001(6) in its opposition and, therefore, the procedural requirement is not waived. If Debtor wishes to have Claim 5 deemed to have been previously discharged, Debtor is required to file an adversary proceeding.

Tentative Ruling

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Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

CONT... Vivian Munson

Chapter 13

The Court is inclined to DENY the motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Vivian Munson

Represented By
Amanda G Billyard
Andy C Warshaw

Movant(s):

Vivian Munson

Represented By
Amanda G Billyard
Andy C Warshaw

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:14-23150 Vivian Munson

Chapter 13

#4.00 Trustee's Motion to Dismiss Case

Also #3

EH__

Docket 180

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Vivian Munson

Represented By
Amanda G Billyard
Andy C Warshaw

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-14501 Julie Lynn Salazar

Chapter 13

#5.00 CONT Motion RE: Objection to Claim Number 6 by Claimant Winegardner
Masonry

From: 12/14/17

Also #6

EH__

Docket 46

Tentative Ruling:

12/14/17

Per the consent of the parties, which was informally provided to the Court via electronic mail, the hearing on the Objection to Claim is CONTINUED to 12/21/17 at 12:30 p.m.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Julie Lynn Salazar

Represented By
Jenny L Doling
Summer M Shaw

Movant(s):

Julie Lynn Salazar

Represented By
Jenny L Doling
Summer M Shaw

Julie Lynn Salazar

Pro Se

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

CONT... Julie Lynn Salazar

Chapter 13

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-14501 Julie Lynn Salazar

Chapter 13

#6.00 CONT Confirmation of Chapter 13 Plan

From: 7/6/17, 10/5/17, 10/26/17, 12/14/17

Also #5

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Julie Lynn Salazar

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-18131 Ramon Gabriel Alvarez

Chapter 13

#7.00 CONT Confirmation of Chapter 13 Plan

From: 11/2/17, 11/30/17, 12/14/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ramon Gabriel Alvarez

Represented By
Devin Sawdayi

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-18385 Bouchra Bernichi

Chapter 13

#8.00 CONT Confirmation of Chapter 13 Plan

From: 11/16/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bouchra Bernichi

Represented By
Nicholas S Nassif

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-18792 Roman Negrete Manriquez

Chapter 13

#9.00 Motion to Avoid Junior Lien on Principal Residence with JPMorgan Chase Bank NA in the amount of \$66,851.17

Also #10

EH __

Docket 22

Tentative Ruling:

12/21/2017

The Court is inclined to DENY the motion for a variety of reasons. First, the motion identifies the hearing time as "12:30 a.m.". Second, while the proof of services states "[c]ertified mail required for service on a national bank," Debtor has served national banks by regular mail. Third, Debtor has not served the secured creditors pursuant to Fed. R. Bankr. P. Rule 7004. Finally, section 3 of the motion, which identifies the liens, states that the junior lien "is not to be avoided," meaning that the motion technically does not request any relief.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Roman Negrete Manriquez

Represented By
Patricia A Mireles

Movant(s):

Roman Negrete Manriquez

Represented By
Patricia A Mireles
Patricia A Mireles
Patricia A Mireles
Patricia A Mireles

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

CONT... Roman Negrete Manriquez

Chapter 13

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-18792 Roman Negrete Manrriquez

Chapter 13

#10.00 CONT Confirmation of Chapter 13 Plan

From: 11/30/17

Also #9

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roman Negrete Manrriquez

Represented By
Patricia A Mireles

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-19154 Ernesto Sanchez

Chapter 13

#11.00 CONT Confirmation of Chapter 13 Plan

From: 12/14/17

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ernesto Sanchez

Represented By
Jerry Rulsky

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-19400 Beverley June Marshall

Chapter 13

#12.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Beverley June Marshall

Represented By
Arthur H Lampel

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-19401 Martin Leland Napier and Clasina Hendrika Napier

Chapter 13

#13.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martin Leland Napier

Represented By
Aaron Lloyd

Joint Debtor(s):

Clasina Hendrika Napier

Represented By
Aaron Lloyd

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-19406 Walter Roman

Chapter 13

#14.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 12/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Walter Roman

Pro Se

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-19414 Helen Roque Robles

Chapter 13

#15.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

***** VACATED *** REASON: CASE DISMISSED 12/1/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Helen Roque Robles

Pro Se

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-19432 Ryan Eddie Hinojosa

Chapter 13

#16.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ryan Eddie Hinojosa

Represented By
Steven A Alpert

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-19433 Edward Uy Hidalgo and Trixie Quijada

Chapter 13

#17.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edward Uy Hidalgo

Represented By
Keith F Rouse

Joint Debtor(s):

Trixie Quijada

Represented By
Keith F Rouse

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-19456 Jose E. Toledo and Antonia Toledo

Chapter 13

#18.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jose E. Toledo

Represented By
Moises A Aviles

Joint Debtor(s):

Antonia Toledo

Represented By
Moises A Aviles

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-19565 Cynthia Ramos

Chapter 13

#19.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cynthia Ramos

Represented By
Hayk Grigoryan

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:30 PM

6:17-19589 Rodrigo Fernando Ramirez Guinea

Chapter 13

#20.00 Confirmation of Chapter 13 Plan

EH__

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rodrigo Fernando Ramirez Guinea

Represented By
James Geoffrey Beirne

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:13-23615 Richard Joseph Adams, Sr.

Chapter 13

#21.00 Trustee's Motion to Dismiss Case

EH__

Docket 143

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
12/14/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Joseph Adams Sr.

Represented By
Steven A Alpert

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:13-30641 Jacob J Cannon and Danielle M Cannon

Chapter 13

#22.00 Trustee's Motion to Dismiss Case

EH__

Docket 92

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jacob J Cannon

Represented By
Lisa H Robinson
John F Brady

Joint Debtor(s):

Danielle M Cannon

Represented By
Lisa H Robinson
John F Brady

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:14-12516 John Alexander Jay

Chapter 13

#23.00 Trustee's Motion to Dismiss Case

EH__

Docket 179

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/29/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Alexander Jay

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:14-12676 Jimmie Lee Bracy, Jr.

Chapter 13

#24.00 Trustee's Motion to Dismiss Case

EH __

Docket 144

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jimmie Lee Bracy Jr.

Represented By
Gregory M Shanfeld

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:14-13884 Sylvia Jimenez Gomez

Chapter 13

#25.00 CONT Trustee's Motion to Dismiss Case

From: 11/16/17

EH__

Docket 55

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
12/19/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sylvia Jimenez Gomez

Represented By
Leonard J Cravens

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:15-12176 Bonnie Jean Conant

Chapter 13

#26.00 Trustee's Motion to Dismiss Case

EH__

Docket 86

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bonnie Jean Conant

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:15-17561 Cresencio Ramirez Ramirez and Maria Olga Ramirez

Chapter 13

#27.00 Trustee's Motion to Dismiss Case

EH__

Docket 123

*** VACATED *** REASON: WITHDRAWAL FILED 12/19/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cresencio Ramirez Ramirez

Represented By
John F Brady

Joint Debtor(s):

Maria Olga Ramirez

Represented By
John F Brady

Movant(s):

Rod (MH) Danielson (TR)

Pro Se

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:16-11872 Garan Bales

Chapter 13

#28.00 CONT Trustee's Motion to Dismiss Case

From: 11/30/17

EH__

Docket 102

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Garan Bales

Represented By
Amanda G Billyard
Andy C Warshaw

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:16-12008 Darna Poole and Jerry Poole

Chapter 13

#29.00 Trustee's Motion to Dismiss Case

EH__

Docket 54

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Darna Poole

Represented By
Todd B Becker

Joint Debtor(s):

Jerry Poole

Represented By
Todd B Becker

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:16-13388 James Leonard Blow, Jr. and Amanda Joyce Atkinson-Blow

Chapter 13

#30.00 Trustee's Motion to Dismiss Case

EH__

Docket 66

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

James Leonard Blow Jr.

Represented By
Jonathan D Doan

Joint Debtor(s):

Amanda Joyce Atkinson-Blow

Represented By
Jonathan D Doan

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:16-15304 Fabiola Puttre

Chapter 13

#31.00 CONT Trustee's Motion to Dismiss Case

From: 12/14/17

EH__

Docket 40

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fabiola Puttre

Represented By
Paul Y Lee

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:16-15453 Brenda Fleming Bell

Chapter 13

#32.00 Trustee's Motion to Dismiss Chapter 13 Proceeding (Delinquency)

EH__

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brenda Fleming Bell

Represented By
Thomas Watkins

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:16-16235 Matthew Thomas Harper and Robin Jean Harper

Chapter 13

#33.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 11/13/17

EH__

Docket 42

***** VACATED *** REASON: WITHDRAWAL FILED 12/20/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Matthew Thomas Harper

Represented By
Norma Duenas

Joint Debtor(s):

Robin Jean Harper

Represented By
Norma Duenas

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:16-16909 Edward Edmund Zozaya and Georgia Parrilla Zozaya

Chapter 13

#34.00 Trustee's Motion to Dismiss Case

EH__

Docket 122

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edward Edmund Zozaya

Represented By
Dana Travis

Joint Debtor(s):

Georgia Parrilla Zozaya

Represented By
Dana Travis

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:16-18546 Alexis I Barahona

Chapter 13

#35.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 11/13/17, 11/30/17, 12/14/17

EH__

Docket 32

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alexis I Barahona

Represented By
Christopher J Langley

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:16-20003 Pamula Raye St Dennis

Chapter 13

#36.00 CONT Trustee's Motion to Dismiss Case

From: 12/14/17

EH__

Docket 103

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
11/29/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pamula Raye St Dennis

Represented By
Cynthia A Dunning

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:16-20329 Gabriel Cruz

Chapter 13

#37.00 CONT Trustee's Motion to Dismiss Case

From: 7/24/17, 8/31/17, 10/5/17, 11/30/17, 12/14/17

EH__

Docket 26

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gabriel Cruz

Represented By
Christopher J Langley

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:16-21234 Frank A Horzen and Barbara A Horzen

Chapter 13

#38.00 Trustee's Motion to Dismiss Case

EH__

Docket 69

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank A Horzen

Represented By
Paul Y Lee

Joint Debtor(s):

Barbara A Horzen

Represented By
Paul Y Lee

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:17-10885 Guillermo Zamudio

Chapter 13

#39.00 Trustee's Motion to Dismiss Case

EH__

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Guillermo Zamudio

Represented By
Paul Y Lee

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:17-13526 Howard Lamar Sanders and Jenique B. Sanders

Chapter 13

#40.00 CONT Trustee's Motion to Dismiss Case

From: 11/30/17

EH__

Docket 25

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Howard Lamar Sanders

Represented By
D Justin Harelik

Joint Debtor(s):

Jenique B. Sanders

Represented By
D Justin Harelik

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:17-13583 William J Schaefer and Jennifer L. Schaefer

Chapter 13

#41.00 Trustee's Motion to Dismiss Case

EH__

Docket 34

*** VACATED *** REASON: WITHDRAWAL OF MOTION FILED
12/14/17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William J Schaefer

Represented By
Patricia M Ashcraft

Joint Debtor(s):

Jennifer L. Schaefer

Represented By
Patricia M Ashcraft

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

12:31 PM

6:17-14588 Chadwick Otieno Ochieng

Chapter 13

#42.00 Trustee's Motion to Dismiss Case

EH__

Docket 21

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chadwick Otieno Ochieng

Represented By
John F Brady

Trustee(s):

Rod Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

1:30 PM

6:17-20029 Simon E. Williams

Chapter 7

#43.00 CONT Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 79039 Lake Club Dr, Bermuda Dunes, CA 92203; Decl of Simon E Williams

MOVANT: SIMON E WILLIAMS

From: 12/19/17

EH__

Docket 4

Tentative Ruling:

12/19/2017

Service: Proper
Opposition: None

The Court is inclined to DENY the motion. First, notice to the law firm that represented the secured creditor (the primary party at whom the motion is directed) does not include the handling lawyers' names. As such notice is problematic as it will be delayed getting into the proper hands. Second, the prior case was not dismissed because of an ordinary payment default, as the motion implies, but because of failure to turn over tax refunds. Third, Debtor does not need the stay to seek a loan modification. Last, any equity in the Debtor's residence will be recovered, on sale by the Trustee (not the Debtor) for the benefit of the estate, and the Trustee has not joined this request. Thus, Debtor has failed to rebut the presumption of lack of good faith as to U.S. Bank pursuant to § 362(c)(3)(C)(ii).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Simon E. Williams

Represented By
Jenny L Doling

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

1:30 PM

CONT... Simon E. Williams

Chapter 7

Movant(s):

Simon E. Williams

Represented By
Jenny L Doling
Jenny L Doling

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

1:30 PM

6:17-19890 Katrina Renee McDowell

Chapter 13

#44.00 CONT Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Residence located at: 48309 Garbo Dr Indio, CA 92201 & 2009 Honda Civic LX ; Decl of Katrina Renee McDowell

MOVANT: KATRINA RENEE MCDOWELL

From: 12/19/17

EH__

Docket 12

Tentative Ruling:

12/19/2017

Service: Proper
Opposition: None

The Court is inclined to DENY the motion. The Court notes that pursuant to § 362(c)(3)(C)(i)(II)(cc) this case was presumptively filed in bad faith as to all creditors, and Debtor has not provided clear and convincing evidence to the contrary. Specifically, Debtor's previous Chapter 13 case was dismissed approximately one year into the plan for failure to make plan payments. Debtor has generally averred that her income has increased and that she is capable of making plan payments, and that her income will increase once she passes the state bar examination. Such a general assertion, however, fails to satisfy the "clear and convincing" standard of § 362(c)(3)(C).

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Katrina Renee McDowell

Represented By
Jenny L Doling

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

1:30 PM

CONT... Katrina Renee McDowell

Chapter 13

Movant(s):

Katrina Renee McDowell

Represented By
Jenny L Doling

Trustee(s):

Rod (MH) Danielson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Thursday, December 21, 2017

Hearing Room 303

2:00 PM

6:17-10141 Shawn Michel Smigel

Chapter 7

#45.00 Motion to approve compromise of Controversy Including Abandonment of Real Property

EH__

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shawn Michel Smigel

Represented By
Jenny L Doling
Summer M Shaw

Trustee(s):

Robert Whitmore (TR)

Represented By
Julie Philippi
Todd L Turoci